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Report of the Committee on the Rights of the Child

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Note

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Convention

1. As at 1 February 2008, the closing date of the forty-seventh session of the Committee on the Rights of the Child, there were 193 States parties to the Convention on the Rights of the Child. An updated list of States that have signed, ratified or acceded to the Convention can be consulted at www.ohchr.org or untreaty.un.org.

2. As at the same date, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict had been ratified or acceded to by 119 States parties and signed by 122 States. Also, as at the same date, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography had been ratified or acceded to by 124 States parties and signed by 115 States. An updated list of States that have signed, ratified or acceded to the two Optional Protocols can be consulted at www.ohchr.org.

B. Sessions of the Committee

3. The Committee held six sessions since the adoption of its previous biennial report (A/61/41): forty-second session (15 May-2 June 2006); forty-third session (11-29 September 2006); forty-fourth session (15 January-2 February 2007); forty-fifth session (21 May-8 June 2007); forty-sixth session (17 September-5 October 2007); forty-seventh session (14 January-1 February 2008). Subsequent to each session, the Committee issues a report of the session containing the full text of all concluding observations adopted as well as any decisions and recommendations (including those arising from a day of general discussion) or general comments adopted. The reports on the aforementioned sessions are contained in documents CRC/C/42/3, CRC/C/43/3, CRC/C/44/3, CRC/C/45/3, CRC/C/46/3 and CRC/C/47/3, respectively.

C. Membership and officers of the Committee

4. From the forty-second to the forty-fourth sessions, the Committee maintained the same members and officers noted in its previous report to the General Assembly (A/61/41, annex I). On 23 February 2005, the Tenth Meeting of States parties to the Convention was convened to elect new members to the Committee. Subsequently, the Committee elected a new set of officers to reflect its new membership.

5. In accordance with article 43 of the Convention, the Eleventh Meeting of States parties to the Convention was convened on 21 February 2007 at United Nations Headquarters. The following nine members of the Committee were elected or re-elected for a term of four years beginning on 28 February 2007: Ms. Agnes Akosua Aidoo; Mr. Luigi Citarella; Mr. Kamel Filali; Ms. Maria Herczog; Ms. Moushira Khattab; Mr. Hatem Kotrane; Mr. Lothar Krappmann; Ms. Rosa Maria Ortiz; Mr. Dainius Puras. The list of the members of the Committee, with an indication of their term of office, appears in annex I to the present report. Annex I also indicates the officers elected at the forty-fifth session of the Committee, and the subsequent changes that occurred at the forty-sixth (see also the reports of the forty-fifth and forty-sixth sessions, CRC/C/45/3 and CRC/C/46/3).

D. Adoption of the report

6. At its 1313th meeting, held on 1 February 2008, the Committee considered the draft of its ninth biennial report to the General Assembly, covering its activities from the forty-second to forty-seventh sessions. The report was adopted unanimously by the Committee.

II. REPORTS BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION, ARTICLE 8 OF THE OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT AND ARTICLE 12 OF THE OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

A. Submission of reports

7. In order to maintain an up-to-date register of status of submission of reports and adoption of related concluding observations, prior to each session the Committee issues a comprehensive document outlining the number of reports submitted to date. This document, entitled "Submission of reports by States parties", also contains relevant information on the exceptional measures taken to address late or non-reporting. The latest version of this report was issued prior to the forty-seventh session of the Committee on 26 November 2007 in document CRC/C/47/2.

8. As of 27 December 2007, the Committee had received 342 reports pursuant to article 44 of the Convention, including 193 initial, 115 second periodic, 29 third periodic and 6 fourth periodic reports, as well as 49 initial State party reports under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and 35 initial reports under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. For the full list of these reports, see CRC/C/47/2, annexes I, II and III, respectively.

9. During the period under consideration, the Committee received from a number of States parties (France, Senegal, Syrian Arab Republic, Turkmenistan, Uzbekistan) additional follow-up information submitted in accordance with the recommendations made by the Committee in its concluding observations.

B. Consideration of reports

10. During its forty-second to forty-seventh sessions, the Committee considered 33 initial and periodic reports under the Convention, 27 initial reports under the Optional Protocol on the involvement of children in armed conflict and 19 initial reports under the Optional Protocol on the sale of children, child prostitution and child pornography.

11. The following table indicates, by session, the reports of States parties considered by the Committee during the period covered by the present report. It further provides the document symbol of the session report in which the concluding observations of the Committee have been published, the symbols of the reports of States parties considered by the Committee and the document symbol of the concluding observations published as a separate document.

	State party report	*Concluding observations*
Forty-second session, 15 May-2 June 2006 (sessional report CRC/C/42/3)		
Belgium	CRC/C/OPAC/BEL/1	CRC/C/OPAC/BEL/CO/1
Canada	CRC/C/OPAC/CAN/1	CRC/C/OPAC/CAN/CO/1
Czech Republic	CRC/C/OPAC/CZE/1	CRC/C/OPAC/CZE/CO/1
Colombia, third	CRC/C/129/Add.6	CRC/C/COL/CO/3
El Salvador	CRC/C/OPAC/SLV/1	CRC/C/OPAC/SLV/CO/1
Iceland	CRC/C/OPSC/ISL/1	CRC/C/OPSC/ISL/CO/1
Iceland	CRC/C/OPAC/ISL/1	CRC/C/OPAC/ISL/CO/1
Italy	CRC/C/OPSA/ITA/1	CRC/C/OPSC/ITA/CO/1
Italy	CRC/C/OPAC/ITA/1	CRC/C/OPAC/ITA/CO/1
Latvia, second	CRC/C/83/Add.16	CRC/C/LVA/CO/2
Lebanon, third	CRC/C/129/Add.7	CRC/C/LBN/CO/3
Mexico, third	CRC/C/125/Add.7	CRC/C/MEX/CO/3
Qatar	CRC/C/OPSC/QAT/1	CRC/C/OPSC/QAT/CO/1
Turkey	CRC/C/OPSA/TUR/1	CRC/C/OPSC/TUR/CO/1
Turkmenistan, initial	CRC/C/TKM/1	CRC/C/TKM/CO/1
United Republic of Tanzania, second	CRC/C/70/Add.26	CRC/C/TZA/CO/2
Uzbekistan, second	CRC/C/104/Add.6	CRC/C/UZB/CO/2
Forty-third session, 11-29 September 2006 (sessional report CRC/C/43/3)		
Benin, second	CRC/C/BEN/2	CRC/C/BEN/CO/2
Denmark	CRC/C/OPSC/DNK/1	CRC/C/OPSC/DNK/CO/1
Ethiopia, third	CRC/C/129/Add.8	CRC/C/ETH/CO/3
Ireland, second	CRC/C/IRL/2	CRC/C/IRL/CO/2
Jordan, third	CRC/C/JOR/3	CRC/C/JOR/CO/3
Kazakhstan	CRC/C/OPAC/KAZ/1	CRC/C/OPAC/KAZ/CO/1
Kiribati, initial	CRC/C/KIR/1	CRC/C/KIR/CO/1
Malta	CRC/C/OPAC/MLT/1	CRC/C/OPAC/MLT/CO/1
Oman, second	CRC/C/OMN/2	CRC/C/OMN/CO/2
Republic of the Congo, initial	CRC/C/COG/1	CRC/C/COG/CO/1
Samoa, initial	CRC/C/WSM/1	CRC/C/WSM/CO/1
Senegal, second	CRC/C/SEN/2	CRC/C/SEN/CO/2
Swaziland, initial	CRC/C/SWZ/1	CRC/C/SWZ/CO/1
Syrian Arab Republic	CRC/C/OPSC/SYR/1	CRC/C/OPSC/SYR/CO/1
Viet Nam	CRC/C/OPSC/VNM/1	CRC/C/OPSC/VNM/CO/1
Viet Nam	CRC/C/OPAC/VNM/1	CRC/C/OPAC/VNM/CO/1
Forty-fourth session, 15 January-2 February 2007 (sessional report CRC/C/44/3)		
Chile, third	CRC/C/CHL/3	CRC/C/CHL/CO/3
Costa Rica	CRC/C/OPSC/CRI/1	CRC/C/OPSC/CRI/CO/1
Costa Rica	CRC/C/OPAC/CRI/1	CRC/C/OPAC/CRI/CO/1
Honduras, third	CRC/C/HND/3	CRC/C/HND/CO/3

	State party report	*Concluding observations*
Kenya, second	CRC/C/KEN/2	CRC/C/KEN/CO/2
Kyrgyzstan	CRC/C/OPSC/KGZ/1	CRC/C/OPSC/KGZ/CO/1
Kyrgyzstan	CRC/C/OPAC/KGZ/1	CRC/C/OPAC/KGZ/CO/1
Mali, second	CRC/C/MLI/2	CRC/C/MLI/CO/2
Malaysia, initial	CRC/C/MYS/1	CRC/C/MYS/CO/1
Marshall Islands, second	CRC/C/93/Add.8	CRC/C/MHL/CO/2
Suriname, second	CRC/C/SUR/2	CRC/C/SUR/CO/2
Forty-fifth session, 21 May-8 June 2007 (sessional report CRC/C/45/3)		
Bangladesh	CRC/C/OPSC/BGD/1	CRC/C/OPSC/BGD/CO/1
Guatemala	CRC/C/OPSC/GTM/1	CRC/C/OPSC/GTM/CO/1
Guatemala	CRC/C/OPAC/GTM/1	CRC/C/OPAC/GTM/CO/1
Kazakhstan	CRC/C/KAZ/3	CRC/C/KAZ/CO/3
Maldives, second and third	CRC/C/MDV/3	CRC/C/MDV/CO/3
Monaco	CRC/C/OPAC/MCO/1	CRC/C/OPAC/MCO/CO/1
Norway	CRC/C/OPAC/NOR/1	CRC/C/OPAC/NOR/CO/1
Slovak Republic, second	CRC/C/SVK/2	CRC/C/SVK/CO/2
Sweden	CRC/C/OPAC/SWE/1	CRC/C/OPAC/SWE/CO/1
Sudan	CRC/C/OPSC/SDN/1	CRC/C/OPSC/SDN/CO/1
Ukraine	CRC/C/OPSC/UKR/1	CRC/C/OPSC/UKR/CO/1
Uruguay, second	CRC/C/URY/2	CRC/C/URY/CO/2
Forty-sixth session, 17 September-5 October 2007 (sessional report CRC/C/46/3)		
Bulgaria	CRC/C/OPSC/BGR/1	CRC/C/OPSC/BGR/CO/1
Bulgaria	CRC/C/OPAC/BGR/1	CRC/C/OPAC/BGR/CO/1
Croatia	CRC/C/OPAC/HRV/1	CRC/C/OPAC/HRV/CO/1
France	CRC/C/OPSC/FRA/1	CRC/C/OPSC/FRA/CO/1
France	CRC/C/OPAC/FRA/1	CRC/C/OPAC/FRA/CO/1
Lithuania	CRC/C/OPAC/LTU/1	CRC/C/OPAC/LTU/CO/1
Luxembourg	CRC/C/OPAC/LUX/1	CRC/C/OPAC/LUX/CO/1
Qatar	CRC/C/OPAC/QAT/1	CRC/C/OPAC/QAT/CO/1
Spain	CRC/C/OPSC/ESP/1	CRC/C/OPSC/ESP/CO/1
Spain	CRC/C/OPAC/ESP/1	CRC/C/OPAC/ESP/CO/1
Syrian Arab Republic	CRC/C/OPAC/SYR/1	CRC/C/OPAC/SYR/CO/1
Venezuela, second	CRC/C/VEN/2	CRC/C/VEN/CO/2
Forty-seventh session, 14 January-1 February 2008 (sessional report CRC/C/47/3)		
Chile	CRC/C/OPSC/CHL/1	CRC/C/OPSC/CHL/CO/1
Chile	CRC/C/OPAC/CHL/1	CRC/C/OPAC/CHL/CO/1
Dominican Republic, second	CRC/C/DOM/2	CRC/C/DOM/CO/2
Germany	CRC/C/OPAC/DEU/1	CRC/C/OPAC/DEU/CO/1
Ireland	CRC/C/OPAC/IRL/1	CRC/C/OPAC/IRL/CO/1
Kuwait	CRC/C/OPSC/KWT/1	CRC/C/OPSC/KWT/CO/1

	State party report	*Concluding observations*
Kuwait	CRC/C/OPAC/KWT/1	CRC/C/OPAC/KWT/CO/1
Timor-Leste, initial	CRC/C/TLS/1	CRC/C/TLS/CO/1
Timor-Leste	CRC/C/OPSC/TLS/1	CRC/C/OPSC/TLS/CO/1
Timor-Leste	CRC/C/OPAC/TLS/1	CRC/C/OPAC/TLS/CO/1

C. Progress achieved: trends and challenges of the implementation process

12. In line with its practice regarding its annual reports, in order to assess achievements and challenges, as well as current trends in child rights, the Committee highlights a particular issue related to the implementation of child rights encountered through its monitoring activities. In this report, the Committee decided to reflect on the experience gained through its monitoring of the implementation of the Optional Protocol on the sale of children, child prostitution and child pornography.

13. The exploitative use of children in prostitution and pornography was to some extent already covered by article 34 of the Convention, which asks States parties to take all appropriate measures to prevent these unlawful activities. Furthermore, article 35 deals with the abduction, sale of, and traffic in children.

14. Building on the important legal framework established by the Convention to deal with such situations, discussion within the United Nation system on issues related to the commercial sexual exploitation of children intensified during the 1990s with the establishment of the mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography, the First World Congress against Commercial Sexual Exploitation of Children, held in Stockholm in 1996, and the Second World Congress, held in Yokohama, Japan, in December 2001. Already in 1994, the Commission on Human Rights had decided to establish an open-ended working group to prepare guidelines for a possible draft optional protocol to the Convention on the sale of children, child prostitution and child pornography.[1] Despite some resistance from different stakeholders, who would have preferred strengthening the implementation of the existing instruments rather than having an additional treaty focusing on similar issues, the work of the open-ended working group continued and, on 25 May 2000, the General Assembly adopted the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

15. The Optional Protocol entered into force on 18 January 2002. As of 1 February 2008, the closing date of the forty-seventh session of the Committee, 124 States were parties to the Optional Protocol and another 33 had signed it. The Committee has considered 24 reports under this Protocol, 19 from its forty-second to forty-seventh sessions.[2] In the same period, the

[1] See Commission on Human Rights resolution 1994/90 of 9 March 1994.

[2] In the period between its forty-second and forty-seventh sessions, the Committee considered the initial reports under the Optional Protocol of the following countries (in alphabetical order): Bangladesh, Bulgaria, Chile, Costa Rica, Denmark, France, Guatemala, Iceland, Italy, Kuwait, Kyrgyzstan, Qatar, Spain, Sudan, Syrian Arab Republic, Timor-Leste, Turkey, Ukraine and Viet Nam.

Committee has also raised issues related to the sale of children, child prostitution and child pornography during the consideration of State party reports under the Convention, usually under the headings "sexual exploitation and trafficking" or "sale and traffic" in the section devoted to special protection measures.

16. At the same time, the Special Rapporteur of the Human Rights Council on the sale of children, child prostitution and child pornography has continued to do important work in raising awareness of these issues, focusing in the last two years in particular on the issue of "demand for sexual services deriving from exploitation" and on the "sale of children's organs". Furthermore, with respect to activities undertaken at the global level, preparation is ongoing for the Third World Congress against Commercial Sexual Exploitation of Children, which will take place in Brazil in late 2008. This will be, after Stockholm (1996) and Yokohama (2001), the third global meeting of States, non-governmental organizations (NGOs), international organizations, academics, media and individuals convened to map out the programme of action that must be taken to combat commercial sexual exploitation of children.

17. Since the Committee has developed most of its jurisprudence under the Optional Protocol during this reporting period, it is of the opinion that it is particularly timely to review its own experience, including by outlining the main challenges faced, and concerns raised, during the consideration of the reports of States parties.

Challenges and concerns

18. One challenge faced by the Committee during these first years of experience in analysing reports under the Optional Protocol on the sale of children, child prostitution and child pornography concerns the legal interpretation of some of the definitions and provisions of the Protocol. One example in this respect comes from the tendency of the States parties to classify sale of children with other illegal activities, and notably with trafficking in children. This may be perhaps the reason why much national legislation lacks specific provisions covering sale of children, since States parties consider this act covered if they have legislative provisions covering all forms of trafficking. However, the Committee has always been very clear in clarifying that, while trafficking is very relevant for this Optional Protocol (it is also mentioned in its preamble) the activities covered in article 3, paragraph 1 (a), of the Optional Protocol are different from trafficking and the two terms should not be used interchangeably. Another example is the extensive reference made to sexual abuse, in particular within the family, in many reports of States parties, which, in fact, is not within the scope of the Optional Protocol.

19. Further elements warranting reflection concern the identification of issues covered by the Optional Protocol and therefore within the mandate of the Committee. In this respect, it is interesting to highlight the jurisprudence of the Committee regarding two specific unlawful activities that have come under its consideration, i.e. the issues of the use of children in camel racing and the forced or compulsory recruitment of children for use in armed conflict.

At its forty-third session (September 2006), the Committee also adopted revised guidelines regarding initial reports to be submitted under article 12 of the Optional Protocol.

The Committee believes that both cases can be considered in the context of sale of children for engagement of the child in forced labour under article 3, paragraph 1 (a) (i) (c), of the Optional Protocol.

20. With respect to the recruitment of children in armed conflict (which is also relevant in the context of the Optional Protocol on the involvement of children in armed conflict), the Committee has considered this issue during the review of the initial report of a State party, when it noted that recruitment of children continued to occur in the country, including with the promise of or in exchange for money, goods or services[3] and recommended that the State party take all necessary measures to prevent, prohibit and punish "any act or transaction, which include the offering, delivering or accepting a child, whereby a child is transferred by any person or group of persons to another for the purpose of recruitment in armed conflict".[4]

21. As for the use of children as jockeys in camel racing, the Committee considers that this activity, being harmful to the health, safety and morals of children, meets all the elements of the worst forms of child labour. Accordingly, the Committee has taken the position to tackle this issue whenever necessary within the context of sale for the purpose of the engagement of the child in forced labour.[5]

22. While it may be argued that, in both cases mentioned above, the coercive element may be lacking, in the sense that the child may voluntarily join the armed forces/groups or enter into the camel-racing activity, it is the position of the Committee that it cannot be defined as a voluntary choice; in most cases it is made by necessity, under threat or coercion, or due to poverty, neglect or absence of opportunities.

Child pornography

23. The widespread distribution of child pornography and its easy accessibility through the Internet have been among the main issues of concern for the Committee during these two years. The Committee considers that States parties and the international community should urgently address these issues, which are reaching very alarming levels. For this reason, in the reporting period, it has consistently expressed its concern over these issues and recommended to States parties to adopt adequate legislation to tackle child pornography, including by criminalizing its possession and by adopting specific legislation on the obligations of Internet service providers in relation to child pornography on the Internet.[6]

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[3] Concluding observations on the Sudan (CRC/C/OPSC/SDN/1) of 21 June 2007.

[4] Ibid., paras. 35 and 36.

[5] For the issue of camel racing in the concluding observations of the Committee, see concluding observations on the Sudan (CRC/C/OPSC/SDN/1), paras. 33 and 34, and those on Qatar (CRC/C/OPSC/QAT/1) of 2 June 2006, paras. 31-32 and 35-36.

[6] See for instance, the concluding observations of the Committee on Turkey (CRC/C/OPSC/TUR/CO/1) of 2 June 2006, paras. 17-19; on Costa Rica (CRC/C/OPSC/CRI/CO/1) of 2 February 2007, paras. 14-15; on the Sudan

Sex tourism

24. Another issue of serious concern for the Committee is the increase of the phenomenon of sex tourism involving children. While sex tourism is not identified as a separate offence under article 3 of the Optional Protocol, it is mentioned in the preamble of the Optional Protocol as well as in its article 10, which deals with international cooperation. The Committee believes that sex tourism is directly connected to the offences covered by the Optional Protocol since it usually involves child prostitution and may be also related to child pornography and, to some extent, sale of children. In this respect, the Committee has recommended that States parties strengthen their efforts to prevent and combat sex tourism, in particular by promoting responsible tourism through awareness campaigns specifically directed at tourists as well as cooperating closely with tour operators, NGOs and civil society organizations.[7]

Non-criminalization of victims, recovery and reintegration

25. In spite of the lack of an explicit provision excluding the criminalization and penalization of child victims of the offences covered by the Optional Protocol,[8] the issue of avoiding the criminalization and double victimization of child victims is among the most common concerns raised by the Committee in the dialogue with States parties. In this respect, the Committee believes that child victims of the offences covered by the Optional Protocol should be neither criminalized nor penalized, and that all possible measures should be taken to avoid their stigmatization and social marginalization. The Committee has noted that many States parties have difficulties with this issue and have inadequate legislation and contradictory provisions, especially with respect to the treatment of children used in prostitution.[9]

26. Directly related to the question of non-criminalization of victims is the obligation incumbent on States parties to take measures to ensure appropriate assistance to child victims,

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(CRC/C/OPSC/SDN/CO/1) of 8 June 2007, paras. 23-24; on France (CRC/C/OPSC/FRA/CO/1) of 5 October 2007, paras. 16-17; and on Chile (CRC/C/OPSC/CHL/CO/1) of 1 February 2008, paras. 22-23.

[7] See the concluding observations of the Committee on Viet Nam (CRC/C/OPSC/VNM/CO/1) of 29 September 2006, paras. 16-17; on Costa Rica (CRC/C/OPSC/CRI/CO/1), paras. 22-23; on Guatemala (CRC/C/OPSC/GTM/CO/1) of 8 June 2007, paras. 33-34; on Bangladesh (CRC/C/OPSC/BGD/CO/1) of 8 June 2007, paras. 20-21; and on Chile (CRC/C/OPSC/CHL/CO/1), paras. 18-19.

[8] In the initial versions of the draft protocol, it was expressly foreseen to include a provision stating that the acts of child victims of the sale of children, child prostitution and child pornography directly related to these offences shall not be criminalized. See, for instance, the report of the Working Group on its second session (E/CN.4/1996/101, p. 30).

[9] See the concluding observations of the Committee on Iceland (CRC/C/OPSC/ISL/CO/1) of 2 June 2006, paras. 13 and 14; on the Sudan (CRC/C/OPSC/SDN/CO/1), paras. 29-30; on Bangladesh (CRC/C/OPSC/BGD/CO/1), paras. 32-33; and on Chile (CRC/C/OPSC/CHL/CO/1), paras. 29-30.

including their full social reintegration and their physical and psychological recovery. The Committee has regularly insisted on the importance of this provision and has stressed that the persons who work with victims of the offences prohibited under the Optional Protocol be equipped with the necessary legal and psychological training. Furthermore, victims should have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

Prevention

27. Finally, the Committee has regularly emphasized the importance of prevention, and notably of adopting a holistic approach to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.[10] The Committee has also highlighted the importance of the provision contained in article 9, paragraph 1, of the Optional Protocol, which recommends that States parties pay particular attention to the protection of children who are especially vulnerable to these practices, such as street children, children living in remote areas and those living in poverty,[11] giving due attention to girls who are among the particularly vulnerable.

III. OVERVIEW OF THE OTHER ACTIVITIES OF THE COMMITTEE

A. Methods of work

1. Work with a two-chamber system

28. Pursuant to General Assembly resolution 59/261 authorizing the Committee to meet in two chambers (see A/61/41), the Committee continued to meet in two chambers for its forty-second (15 May-2 June 2006) and forty-third sessions (11-29 September 2006). As of its forty-fourth session, the Committee resumed meetings in plenary, thus reducing the number of reports considered each session. The Committee found the two-chamber system most effective in reducing the backlog of reports pending consideration. The Chairperson of the Committee addressed the General Assembly on two occasions on this issue. The Committee has once again accumulated a backlog, which is expected to reach the level of the pre-two-chamber period. Forty-four reports had been received and were pending consideration as of 1 February 2008. As the Committee receives over 50 reports per year and can consider approximately 11 per session, it is inevitable that the backlog will continue to grow.

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[10] See the concluding observations of the Committee on Morocco (CRC/C/OPSC/MAR/CO/1) of 27 January 2006, paras. 34-35; on Viet Nam (CRC/C/OPSC/VNM/CO/1), paras. 21-22; on the Sudan (CRC/C/OPSC/SDN/CO/1), paras. 17-18; and on Chile (CRC/C/OPSC/CHL/CO/1), paras. 21-22.

[11] See its concluding observations on the Sudan (CRC/C/OPSC/SDN/CO/1), paras. 17-18. See also concluding observations on Morocco (CRC/C/OPSC/MAR/CO/1), paras. 32-33; on the Syrian Arab Republic (CRC/C/OPSC/SYR/CO/1), 29 September 2006, paras. 25-26; on Viet Nam (CRC/C/OPSC/VNM/CO/1), paras. 21-22.

29. The Committee will consider this issue at its forty-eighth session (19 May-6 June 2008). The Chairperson of the Committee will express the views of the Committee in her oral report to the General Assembly at its sixty-third session in 2008, taking into account developments and discussions within the Committee until September 2008, as well as introduce any decisions the Committee may take at its forty-eighth session. A copy of any such decisions and the related statement of programme budget implications will be included in the report on the status of the Convention on the Rights of the Child to the General Assembly at its sixty-third session.

2. General comments

30. During the period under review, the Committee adopted the following three general comments:

- General comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/GC/8), at its forty-second session (see annex II)

- General comment No. 9 (2006) on the rights of children with disabilities (CRC/C/GC/9), at its forty-third session (see annex III)

- General Comment No. 10 (2007) on children's rights in juvenile justice (CRC/C/GC/10), at its forty-fourth session (see annex IV)

31. As is its practice, in addition to the active involvement of the Committee members, other relevant United Nations human rights treaty bodies and mechanisms, United Nations agencies and bodies, NGOs and individual experts participate in the process of drafting general comments. In addition to the three general comments adopted, the Committee is in the process of drafting two more general comments, one on the rights of indigenous children and another on the right of the child to be heard.

3. Introduction meeting for new members

32. On 18 May 2007, the Office of the United Nations High Commissioner for Human Rights (OHCHR) organized an informal introduction meeting to give the five newly elected members a chance to familiarize themselves with the working methods and procedures of the Committee. Five members of the Committee actively participated in the meeting.

B. International cooperation and solidarity for the implementation of the Convention

1. Cooperation with United Nations and other competent bodies

33. During the period covered by the present report, the Committee pursued its cooperation with United Nations bodies, specialized agencies and other competent bodies.

34. The Committee held meetings with the following United Nations agencies and bodies and other competent bodies (the documents referred to in parentheses contain additional information on these meetings).

United Nations bodies and agencies

International Labour Organization/International Programme on the Elimination of Child Labour (ILO/IPEC) for a presentation of the ILO Global Report on Child Labour (CRC/C/42/3)

United Nations Children's Fund (UNICEF) Global Policy Section for a presentation of the report on the usefulness of the concluding observations of the Committee (CRC/C/42/3)

UNICEF, the NGO Group for the Convention on the Rights of the Child, and the International Reference Centre for the Rights of Children Deprived of Their Family of the International Social Service (ISS/IRC) to discuss the draft United Nations Guidelines for the protection and alternative care of children without parental care (CRC/C/42/3)

Ms. Hilde Frafjord Johnson, Deputy Executive Director of UNICEF and other representatives of UNICEF to receive the third revised version of the UNICEF Implementation Handbook for the Convention on the Rights of the Child (CRC/C/46/3)

Representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR), to discuss the revised guidelines for UNHCR staff on the determinations of the best interests of the child

Others

NGO Group, Sub-Group on Child Labour (CRC/C/42/3)

The Joint Coordinator of the Global Initiative to End All Corporal Punishment of Children, to discuss the general comment No. 8 (2006) of the Committee on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/42/3)

NGO Group, Sub-Group on Children and Violence (CRC/C/42/3)

Save the Children Alliance to introduce the Global Challenge on Education for Children affected by armed conflict (CRC/C/42/3)

Save the Children Alliance to introduce the Handbook on Child Rights Programming (CRC/C/42/3)

NGO Group for the Convention on the Rights of the Child to discuss ongoing cooperation, working methods related to the two chambers and issues related to treaty body reform (CRC/C/42/3)

Mr. Gary Melton, Consultant, UNICEF, the NGO Group for the Convention on the Rights of the Child, related to the development of a general comment on article 12 of the Convention (CRC/C/43/3)

World Health Organization (WHO), UNICEF, Bernard van Leer Foundation related to the work of the Committee, including its general comment No. 7 (2006) on implementing child rights in early childhood (CRC/C/43/3)

Defence for Children International, Palestine (CRC/C/43/3)

Defence for Children International (CRC/C/44/3)

Mr. Maarten Brekelman, World Initiative for Orphans (CRC/C/44/3)

Ms. Jeroo Billimoria Aflatoun, Child Savings International (CRC/C/44/3)

Aga Khan Foundation, Bernard van Leer Foundation, WHO, UNICEF related to general comment No. 7 (2006) on implementing child rights in early childhood (CRC/C/45/3)

Ms. Maud de Boer-Buquicchio, Deputy Secretary-General of the Council of Europe to discuss modalities of enhancing cooperation (CRC/C/45/3)

Ms. Gerison Lansdown (consultant) UNICEF and Save the Children UK on general comment on article 12 of the Convention (CRC/C/45/3)

Representative of the Government of Brazil, UNICEF and International Social Service related to the draft United Nations guidelines for the protection and alternative care of children without parental care (CRC/C/45/3)

Save the Children Alliance, to discuss education in situations of conflict (CRC/C/45/3)

Ms. Davinia Ovett and Mr. Bernard Boeton, related to the activities of the Interagency Panel on Juvenile Justice (CRC/C/46/3)

Mr. Jakob E. Doek, former Chairperson of the Committee, to discuss issues related to possible cooperation with the African Committee on the Rights and Welfare of the Child (CRC/C/46/3)

Mr. Peter Newell, Joint Coordinator of the Global Initiative to End All Corporal Punishment of Children and Ms. Jennifer Philpot-Nissen, World Vision International, for a presentation of the civil society initiative for the development of a complaints procedure under the Convention on the Rights of the Child (CRC/C/46/3)

Representatives of the Coordinating Committee of the NGO Group for the Convention on the Rights of the Child to discuss issues of cooperation and mutual interest (CRC/C/46/3)

International Baby Food Action Network (CRC/C/47/3)

Delegations of the Group of Latin American and Caribbean States (GRULAC), the European Union (EU) and other States parties to the Convention for an informal discussion related to child rights and the Human Rights Council (CRC/C/47/3)

Commissioner of Social Affairs of the African Commission, to discuss cooperation with the African Committee on the Rights and Welfare of the Child

Ms. Gerison Lansdown (consultant) on the general comment on article 12 of the Convention (CRC/C/47/3)

International Federation of Social Workers (CRC/C/47/3).

35. The Committee also held meetings with experts from the following other United Nations human rights mechanisms:

Mr. Paulo Sergio Pinheiro, independent expert for the United Nations study on violence against children (CRC/C/42)

Mr. Paulo Sergio Pinheiro, independent expert for the United Nations study on violence against children, to discuss the study (A/61/299), the report of the independent expert for the United Nations study on violence against children (A/62/209) and the follow-up to the recommendations of the study (CRC/C/43/3, CRC/C/44/3 and CRC/C/45/3)

Mr. Miloon Kothari, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (CRC/C/45/3).

36. The Chairperson of the Committee participated in the eighteenth and nineteenth meetings of persons chairing the human rights treaty bodies. Three members of the Committee also participated in the fifth and sixth inter-committee meetings (held in June 2006 and 2007).

2. Participation in United Nations and other relevant meetings

37. Members of the Committee participated in a variety of meetings at the international, regional and national levels where issues relevant to the rights of the child were raised.

3. Other related activities

38. The Office of the High Commissioner for Human Rights, in cooperation with the Government of Burkina Faso, the NGO Plan International, UNICEF and the International Organization of la Francophonie (OIF), organized a subregional seminar on the implementation of the concluding observations of the Committee, from 6 to 8 November 2007 in Ouagadougou. The seminar, bringing together over 150 participants, was directed at government officials, members of parliament, representatives of national human rights institutions and the civil society. It also brought together journalists from eight francophone countries of the West African region, namely Benin, Burkina Faso, Côte d'Ivoire, Guinea, Mali, Niger, Senegal and Togo. Additionally, one government representative and one NGO representative from each of the following countries was invited to participate in the meeting as observers: Cape Verde and Guinea Bissau (as lusophone countries); Ghana (as an anglophone member of the Economic Community of West African States (ECOWAS)); and Cameroon (as a Central African country). A number of experts, including members of the African Committee on the Rights and Welfare of the Child, also participated in the workshop. In addition, five members of the Committee on the Rights of the Child, Ms. Yanghee Lee, Chairperson, Mr. Jean Zermatten and Mr. Kamel Filali, Vice-Chairpersons, Mr. Hatem Kotrane and Ms. Agnes Aidoo - also participated as experts.

Representatives of United Nations entities, regional organizations (African Commission on Human Rights and ECOWAS), and international NGOs (such as Save the Children, the NGO Group for the Convention on the Rights of the Child, the International Baby-Food Action Network), also actively participated.

39. Members of the Committee have actively contributed to activities related to the United Nations study on violence against children, which was presented to the General Assembly at its sixty-first session (A/61/299). The Committee has consistently encouraged States parties to the Convention to implement the recommendations contained in the study. The Committee notes with appreciation the progress report presented by the independent expert for the United Nations study on violence against children to the General Assembly at its sixty-second session (A/62/209) documenting the wealth of initiatives generated by the study. The Committee welcomes General Assembly resolution 62/141, in which the Assembly requested the Secretary-General to appoint a Special Representative on violence against children. The Committee is confident that the Special Representative will ensure high level, sustained support for existing efforts to implement the recommendations of the study and to eliminate violence against children.

C. General thematic discussions

40. In accordance with rule 75 of its rules of procedure, the Committee holds an annual day of general discussion on the first Friday of its September session. On 15 September 2006, at the forty-third session of the Committee, the thematic discussion was devoted to the right of the child to be heard. The discussion was well attended by representatives of States parties, United Nations agencies, funds and programmes, NGOs and academic institutions. A summary of the discussion, the list of participants and the set of related recommendations adopted by the Committee can be found in the report of the Committee on its forty-third session (CRC/C/43/3). The Committee has also continued to follow this thematic issue closely and is in the process of preparing a general comment on the issue (see paragraph 31 above).

41. On 21 September 2007, at the forty-seventh session, the day of general discussion was devoted to the issue of "Resources for the rights of the child - responsibility of States". Representatives of States parties, United Nations partners and NGOs attended the discussion. A summary of the discussion and the recommendations adopted by the Committee as well as a list of participants are contained in the report of the Committee on its forty-sixth session (CRC/C/46/3).

Annex I

MEMBERSHIP OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

Name of member	*Country of nationality*
Ms. Agnes Akosua AIDOO*	Ghana
Ms. Alya Ahmed Bin Saif AL-THANI***[a]*	Qatar
Ms. Joyce ALUOCH**	Kenya
Mr. Luigi CITARELLA*	Italy
Mr. Kamel FILALI*	Algeria
Ms. Maria HERCZOG*	Hungary
Ms. Moushira KHATTAB*	Egypt
Mr. Hatem KOTRANE*	Tunisia
Mr. Lothar Friedrich KRAPPMANN*	Germany
Ms. Yanghee LEE**	Republic of Korea
Ms. Rosa Maria ORTIZ*	Paraguay
Mr. David Brent PARFITT**	Canada
Mr. Awich POLLAR**	Uganda
Mr. Dainius PURAS*	Lithuania
Mr. Kamal SIDDIQUI**	Bangladesh
Ms. Lucy SMITH**	Norway
Ms. Nevena VUCKOVIC-SAHOVIC**	Republic of Serbia
Mr. Jean ZERMATTEN**	Switzerland

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* Term expires on 28 February 2011.

** Term expires on 28 February 2009.

[a] Replacing Ms. Ghalia Al-Thani following her resignation as of 17 September 2007.

Bureau of the Committee on the Rights of the Child 2007-2009

Chairperson:	Ms. Lee
Vice-Chair:	Ms. Aidoo[b]
Vice-Chair:	Mr. Filali
Vice-Chair:	Ms. Ortiz
Vice-Chair:	Mr. Zermatten
Rapporteur:	Mr. Krappmann

[b] Ms. Aidoo replaced Mr. Pollar who was appointed Vice-Chair at the forty-fifth session in May 2007; he later stepped down from this position at the forty-sixth session in September 2007.

Annex II

GENERAL COMMENT No. 8 (2006)

The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)

I. OBJECTIVES

1. Following its two days of general discussion on violence against children, held in 2000 and 2001, the Committee on the Rights of the Child ("the Committee") resolved to issue a series of general comments concerning eliminating violence against children, of which this is the first. The Committee aims to guide States parties in understanding the provisions of the Convention on the Rights of the Child ("the Convention") concerning the protection of children against all forms of violence. This general comment focuses on corporal punishment and other cruel or degrading forms of punishment, which are currently very widely accepted and practised forms of violence against children.

2. The Convention and other international human rights instruments recognize the right of the child to respect for the child's human dignity and physical integrity and equal protection under the law. The Committee is issuing this general comment to highlight the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take.

3. Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an obligation of States parties under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies.

II. BACKGROUND

4. The Committee has, from its earliest sessions, paid special attention to asserting children's right to protection from all forms of violence. In its examination of States parties' reports, and most recently in the context of the United Nations study on violence against children, it has noted with great concern the widespread legality and persisting social approval of corporal punishment and other cruel or degrading punishment of children.[a] Already in 1993, the Committee noted in its report on its fourth session that it "recognized the importance of the question of corporal punishment in improving the system of promotion and protection of the rights of the child and decided to continue to devote attention to it in the process of examining States parties' reports".[b]

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[a] United Nations study on violence against children (A/61/299). For details see http://www.violencestudy.org.

[b] CRC/C/20, para. 176.

5. Since it began examining States parties' reports the Committee has recommended prohibition of all corporal punishment, in the family and other settings, to more than 130 States in all continents.[c] The Committee is encouraged that a growing number of States are taking appropriate legislative and other measures to assert children's right to respect for their human dignity and physical integrity and to equal protection under the law. The Committee understands that by 2006, more than 100 States had prohibited corporal punishment in their schools and penal systems for children. A growing number have completed prohibition in the home and family and all forms of alternative care.[d]

6. In September 2000, the Committee held its first of two days of general discussion on violence against children. It focused on "State violence against children" and afterwards adopted detailed recommendations, including for the prohibition of all corporal punishment and the launching of public information campaigns "to raise awareness of and sensitize the public about the severity of human rights violations in this domain and their harmful impact on children, and to address cultural acceptance of violence against children, promoting instead 'zero-tolerance' of violence".[e]

7. In April 2001, the Committee adopted its first general comment on "The aims of education" and reiterated that corporal punishment was incompatible with the Convention: "... Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child, enables the child to express his or her views freely in accordance with article 12, paragraph 1, and to participate in school life. Education must also be provided in a way that respects the strict limits on discipline reflected in article 28, paragraph 2, and promotes non-violence in school. The Committee has repeatedly made clear in its concluding observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline".[f]

8. In recommendations adopted following its second day of general discussion, on "Violence against children within the family and in schools", held in September 2001, the Committee called upon States to "enact or repeal, as a matter of urgency, their legislation in

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[c] All the concluding observations adopted by the Committee may be consulted at www.ohchr.org.

[d] The Global Initiative to End All Corporal Punishment of Children provides reports on the legal status of corporal punishment at www.endcorporalpunishment.org.

[e] Committee on the Rights of the Child, day of general discussion on State violence against children, Report of the Committee on its twenty-fifth session, September/October 2000, (CRC/C/100), paras. 666-688.

[f] Committee on the Rights of the Child, general comment No. 1 (2001), The aims of education, para. 8.

order to prohibit all forms of violence, however light, within the family and in schools, including as a form of discipline, as required by the provisions of the Convention".[g]

9. Another outcome of the Committee's 2000 and 2001 days of general discussion was a recommendation that the Secretary-General should be requested, through the General Assembly, to carry out an in-depth international study on violence against children. The General Assembly took this forward in 2001.[h] Within the context of the United Nations study, carried out between 2003 and 2006, the need to prohibit all currently legalized violence against children has been highlighted, as has children's own deep concern at the almost universal high prevalence of corporal punishment in the family and also its persisting legality in many States in schools and other institutions, and in penal systems for children in conflict with the law.

III. DEFINITIONS

10. "Child" is defined as in the Convention as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".[i]

11. The Committee defines "corporal" or "physical" punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ("smacking", "slapping", "spanking") children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.

12. Corporal punishment and other cruel or degrading forms of punishment of children take place in many settings, including within the home and family, in all forms of alternative care, schools and other educational institutions and justice systems - both as a sentence of the courts and as a punishment within penal and other institutions - in situations of child labour, and in the community.

13. In rejecting any justification of violence and humiliation as forms of punishment for children, the Committee is not in any sense rejecting the positive concept of discipline. The

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[g] Committee on the Rights of the Child, day of general discussion on violence against children within the family and in schools, Report on the twenty-eighth session, September/October 2001, (CRC/C/111), paras. 701-745.

[h] General Assembly resolution 56/138.

[i] Article 1.

healthy development of children depends on parents and other adults for necessary guidance and direction, in line with children's evolving capacities, to assist their growth towards responsible life in society.

14. The Committee recognizes that parenting and caring for children, especially babies and young children, demand frequent physical actions and interventions to protect them. This is quite distinct from the deliberate and punitive use of force to cause some degree of pain, discomfort or humiliation. As adults, we know for ourselves the difference between a protective physical action and a punitive assault; it is no more difficult to make a distinction in relation to actions involving children. The law in all States, explicitly or implicitly, allows for the use of non-punitive and necessary force to protect people.

15. The Committee recognizes that there are exceptional circumstances in which teachers and others, e.g. those working with children in institutions and with children in conflict with the law, may be confronted by dangerous behaviour, which justifies the use of reasonable restraint to control it. Here too there is a clear distinction between the use of force motivated by the need to protect a child or others and the use of force to punish. The principle of the minimum necessary use of force for the shortest necessary period of time must always apply. Detailed guidance and training is also required, both to minimize the necessity to use restraint and to ensure that any methods used are safe and proportionate to the situation and do not involve the deliberate infliction of pain as a form of control.

IV. HUMAN RIGHTS STANDARDS AND CORPORAL PUNISHMENT OF CHILDREN

16. Before the adoption of the Convention, the International Bill of Human Rights - the Universal Declaration and the two International Covenants, on Civil and Political Rights and on Economic, Social and Cultural Rights - upheld "everyone's" right to respect for his/her human dignity and physical integrity and to equal protection under the law. In asserting the obligation of States to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment, the Committee notes that the Convention builds on this foundation. The dignity of each and every individual is the fundamental guiding principle of international human rights law.

17. The preamble to the Convention affirms, in accordance with the principles in the Charter of the United Nations, repeated in the preamble to the Universal Declaration, that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". The preamble to the Convention also recalls that, in the Universal Declaration, the United Nations "has proclaimed that childhood is entitled to special care and assistance".

18. Article 37 of the Convention requires States to ensure that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment". This is complemented and extended by article 19, which requires States to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child". There is no ambiguity: "all forms of physical or mental violence" does not leave room for any level of legalized violence against children. Corporal punishment and

other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them.

19. In addition, article 28, paragraph 2, of the Convention refers to school discipline and requires States parties to "take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention".

20. Article 19 and article 28, paragraph 2, do not refer explicitly to corporal punishment. The *travaux préparatoires* for the Convention do not record any discussion of corporal punishment during the drafting sessions. But the Convention, like all human rights instruments, must be regarded as a living instrument, whose interpretation develops over time. In the 17 years since the Convention was adopted, the prevalence of corporal punishment of children in their homes, schools and other institutions has become more visible, through the reporting process under the Convention and through research and advocacy by, among others, national human rights institutions and non-governmental organizations (NGOs).

21. Once visible, it is clear that the practice directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity. The distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence.

22. The Committee emphasizes that eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States parties. It notes that other treaty bodies, including the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee against Torture have reflected the same view in their concluding observations on States parties' reports under the relevant instruments, recommending prohibition and other measures against corporal punishment in schools, penal systems and, in some cases, the family. For example, the Committee on Economic, Social and Cultural Rights, in its general comment No. 13 (1999) on "The right to education" stated: "In the Committee's view, corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration and both Covenants: the dignity of the individual. Other aspects of school discipline may also be inconsistent with school discipline, including public humiliation."[j]

23. Corporal punishment has also been condemned by regional human rights mechanisms. The European Court of Human Rights, in a series of judgements, has progressively condemned corporal punishment of children, first in the penal system, then in schools, including private schools, and most recently in the home.[k] The European Committee of Social Rights, monitoring

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[j] Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education (art. 13), para. 41.

[k] Corporal punishment was condemned in a series of decisions of the European Commission on Human Rights and judgements of the European Court of Human Rights; see in particular *Tyrer*

compliance of member States of the Council of Europe with the European Social Charter and Revised Social Charter, has found that compliance with the Charters requires prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere.[l]

24. An Advisory Opinion of the Inter-American Court of Human Rights, on the *Legal Status and Human Rights of the Child* (2002) holds that the States parties to the American Convention on Human Rights "are under the obligation ... to adopt all positive measures required to ensure protection of children against mistreatment, whether in their relations with public authorities, or in relations among individuals or with non-governmental entities". The Court quotes provisions of the Convention on the Rights of the Child, conclusions of the Committee on the Rights of the Child and also judgements of the European Court of Human Rights relating to the obligations of States to protect children from violence, including within the family. The Court concludes that "the State has the duty to adopt positive measures to fully ensure effective exercise of the rights of the child".[m]

25. The African Commission on Human and Peoples' Rights monitors implementation of the African Charter on Human and Peoples' Rights. In a 2003 decision on an individual communication concerning a sentence of "lashes" imposed on students, the Commission found that the punishment violated article 5 of the African Charter, which prohibits cruel, inhuman or degrading punishment. It requested the relevant Government to amend the law, abolishing the penalty of lashes, and to take appropriate measures to ensure compensation of the victims. In its decision, the Commission states: "There is no right for individuals, and particularly the Government of a country to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State-sponsored torture under the Charter and contrary to the very nature of this human rights treaty."[n] The Committee on the Rights of the Child is pleased to

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v. UK, 1978; *Campbell and Cosans v. UK*, 1982; *Costello-Roberts v. UK*, 1993; *A v. UK*, 1998. European Court judgements are available at http://www.echr.coe.int/echr.

[l] European Committee of Social Rights, general observations regarding article 7, paragraph 10, and article 17, *Conclusions XV-2*, Vol. 1, General Introduction, p. 26, 2001; the Committee has since issued conclusions, finding a number of member States not in compliance because of their failure to prohibit all corporal punishment in the family and in other settings. In 2005 it issued decisions on collective complaints made under the charters, finding three States not in compliance because of their failure to prohibit. For details, see www.coe.int/T/E/Human_Rights/Esc/; also *Eliminating corporal punishment: a human rights imperative for Europe's children*, Council of Europe Publishing, 2005.

[m] Inter-American Court of Human Rights, Advisory Opinion OC-17/2002 of 28 August 2002, paras. 87 and 91.

[n] African Commission on Human and Peoples' Rights, *Curtis Francis Doebbler v. Sudan*, Comm. No. 236/2000 (2003); see para. 42.

note that constitutional and other high-level courts in many countries have issued decisions condemning corporal punishment of children in some or all settings, and in most cases quoting the Convention.[•]

26. When the Committee has raised eliminating corporal punishment with certain States during the examination of their reports, governmental representatives have sometimes suggested that some level of "reasonable" or "moderate" corporal punishment can be justified as in the "best interests" of the child. The Committee has identified, as an important general principle, the requirement of the Convention that the best interests of the child should be a primary consideration in all actions concerning children (art. 3, para. 1). The Convention also asserts, in article 18, that the best interests of the child will be parents' basic concern. But interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence and the requirement to give due weight to the child's views; it cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity.

27. The preamble to the Convention upholds the family as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children". The Convention requires States to respect and support families. There is no conflict whatsoever with the obligation of States to ensure that the human dignity and physical integrity of children within the family receive full protection alongside other family members.

28. Article 5 of the Convention requires States to respect the responsibilities, rights and duties of parents "to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the

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[•] For example, in 2002 the Fiji Court of Appeal declared corporal punishment in schools and the penal system unconstitutional. The judgement declared: "Children have rights no wit inferior to the rights of adults. Fiji has ratified the Convention on the Rights of the Child. Our Constitution also guarantees fundamental rights to every person. Government is required to adhere to principles respecting the rights of all individuals, communities and groups. By their status as children, children need special protection. Our educational institutions should be sanctuaries of peace and creative enrichment, not places for fear, ill-treatment and tampering with the human dignity of students" (Fiji Court of Appeal, *Naushad Ali v. State*, 2002). In 1996, Italy's highest Court, the Supreme Court of Cassation in Rome, issued a decision that effectively prohibited all parental use of corporal punishment. The judgement states: "The use of violence for educational purposes can no longer be considered lawful. There are two reasons for this: the first is the overriding importance which the [Italian] legal system attributes to protecting the dignity of the individual. This includes 'minors' who now hold rights and are no longer simply objects to be protected by their parents or, worse still, objects at the disposal of their parents. The second reason is that, as an educational aim, the harmonious development of a child's personality, which ensures that he/she embraces the values of peace, tolerance and co-existence, cannot be achieved by using violent means which contradict these goals" (Cambria, Cass, sez. VI, 18 Marzo 1996 [Supreme Court of Cassation, 6th Penal Section, 18 March 1996], Foro It II 1996, 407 (Italy)). Also see South African Constitutional Court (2000) *Christian Education South Africa v. Minister of Education*, CCT4/00; 2000 (4) SA757 (CC); 2000 (10) BCLR 1051 (CC), 18 August 2000.

present Convention". Here again, interpretation of "appropriate" direction and guidance must be consistent with the whole Convention and leaves no room for justification of violent or other cruel or degrading forms of discipline.

29. Some raise faith-based justifications for corporal punishment, suggesting that certain interpretations of religious texts not only justify its use, but provide a duty to use it. Freedom of religious belief is upheld for everyone in the International Covenant on Civil and Political Rights (art. 18), but practise of a religion or belief must be consistent with respect for others' human dignity and physical integrity. Freedom to practise one's religion or belief may be legitimately limited in order to protect the fundamental rights and freedoms of others. In certain States, the Committee has found that children, in some cases from a very young age, in other cases from the time that they are judged to have reached puberty, may be sentenced to punishments of extreme violence, including stoning and amputation, prescribed under certain interpretations of religious law. Such punishments plainly violate the Convention and other international human rights standards, as has been highlighted also by the Human Rights Committee and the Committee against Torture, and must be prohibited.

V. MEASURES AND MECHANISMS REQUIRED TO ELIMINATE CORPORAL PUNISHMENT AND OTHER CRUEL OR DEGRADING FORMS OF PUNISHMENT

A. Legislative measures

30. The wording of article 19 of the Convention builds on article 4 and makes clear that legislative as well as other measures are required to fulfil the obligations of States to protect children from all forms of violence. The Committee has welcomed the fact that, in many States, the Convention or its principles have been incorporated into domestic law. All States have criminal laws to protect citizens from assault. Many have constitutions and/or legislation reflecting international human rights standards and article 37 of the Convention, which uphold "everyone's" right to protection from torture and cruel, inhuman or degrading treatment or punishment. Many also have specific child protection laws that make "ill-treatment" or "abuse" or "cruelty" an offence. But the Committee has learned from its examination of States' reports that such legislative provisions do not generally guarantee the child protection from all corporal punishment and other cruel or degrading forms of punishment, in the family and in other settings.

31. In its examination of reports, the Committee has noted that in many States there are explicit legal provisions in criminal and/or civil (family) codes that provide parents and other carers with a defence or justification for using some degree of violence in "disciplining" children. For example, the defence of "lawful", "reasonable" or "moderate" chastisement or correction has formed part of English common law for centuries, as has a "right of correction" in French law. At one time, in many States, the same defence was also available to justify the chastisement of wives by their husbands and of slaves, servants and apprentices by their masters. The Committee emphasizes that the Convention requires the removal of any provisions (in statute or common - case law) that allow some degree of violence against children (e.g. "reasonable" or "moderate" chastisement or correction), in their homes/families or in any other setting.

32. In some States, corporal punishment is specifically authorized in schools and other institutions, with regulations setting out how it is to be administered and by whom. And in a minority of States, corporal punishment using canes or whips is still authorized as a sentence of the courts for child offenders. As frequently reiterated by the Committee, the Convention requires the repeal of all such provisions.

33. In some States, the Committee has observed that while there is no explicit defence or justification of corporal punishment in the legislation, nevertheless traditional attitudes to children imply that corporal punishment is permitted. Sometimes these attitudes are reflected in court decisions (in which parents or teachers or other carers have been acquitted of assault or ill-treatment on the grounds that they were exercising a right or freedom to use moderate "correction").

34. In the light of the traditional acceptance of violent and humiliating forms of punishment of children, a growing number of States have recognized that simply repealing authorization of corporal punishment and any existing defences is not enough. In addition, explicit prohibition of corporal punishment and other cruel or degrading forms of punishment, in their civil or criminal legislation, is required in order to make it absolutely clear that it is as unlawful to hit or "smack" or "spank" a child as to do so to an adult, and that the criminal law on assault does apply equally to such violence, regardless of whether it is termed "discipline" or "reasonable correction".

35. Once the criminal law applies fully to assaults on children, the child is protected from corporal punishment wherever he or she is and whoever the perpetrator is. But in the view of the Committee, given the traditional acceptance of corporal punishment, it is essential that the applicable sectoral legislation - e.g. family law, education law, law relating to all forms of alternative care and justice systems, employment law - clearly prohibits its use in the relevant settings. In addition, it is valuable if professional codes of ethics and guidance for teachers, carers and others, and also the rules or charters of institutions, emphasize the illegality of corporal punishment and other cruel or degrading forms of punishment.

36. The Committee is also concerned at reports that corporal punishment and other cruel or degrading punishments are used in situations of child labour, including in the domestic context. The Committee reiterates that the Convention and other applicable human rights instruments protect the child from economic exploitation and from any work that is likely to be hazardous, interferes with the child's education, or is harmful to the child's development, and that they require certain safeguards to ensure the effective enforcement of this protection. The Committee emphasizes that it is essential that the prohibition of corporal punishment and other cruel or degrading forms of punishment must be enforced in any situations in which children are working.

37. Article 39 of the Convention requires States to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of "any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment". Corporal punishment and other degrading forms of punishment may inflict serious damage to the physical, psychological and social development of children, requiring appropriate health and other care and treatment. This must take place in an environment that fosters the integral health, self-respect and dignity of the child, and be extended

as appropriate to the child's family group. There should be an interdisciplinary approach to planning and providing care and treatment, with specialized training of the professionals involved. The child's views should be given due weight concerning all aspects of their treatment and in reviewing it.

B. Implementation of prohibition of corporal punishment and other cruel or degrading forms of punishment

38. The Committee believes that implementation of the prohibition of all corporal punishment requires awareness-raising, guidance and training (see paragraph 45 et seq. below) for all those involved. This must ensure that the law operates in the best interests of the affected children - in particular when parents or other close family members are the perpetrators. The first purpose of law reform to prohibit corporal punishment of children within the family is prevention: to prevent violence against children by changing attitudes and practice, underlining children's right to equal protection and providing an unambiguous foundation for child protection and for the promotion of positive, non-violent and participatory forms of child-rearing.

39. Achieving a clear and unconditional prohibition of all corporal punishment will require varying legal reforms in different States parties. It may require specific provisions in sectoral laws covering education, juvenile justice and all forms of alternative care. But it should be made explicitly clear that the criminal law provisions on assault also cover all corporal punishment, including in the family. This may require an additional provision in the criminal code of the State party. But it is also possible to include a provision in the civil code or family law, prohibiting the use of all forms of violence, including all corporal punishment. Such a provision emphasizes that parents or other caretakers can no longer use any traditional defence that it is their right ("reasonably" or "moderately") to use corporal punishment if they face prosecution under the criminal code. Family law should also positively emphasize that parental responsibility includes providing appropriate direction and guidance to children without any form of violence.

40. The principle of equal protection of children and adults from assault, including within the family, does not mean that all cases of corporal punishment of children by their parents that come to light should lead to prosecution of parents. The *de minimis* principle - that the law does not concern itself with trivial matters - ensures that minor assaults between adults only come to court in very exceptional circumstances; the same will be true of minor assaults on children. States need to develop effective reporting and referral mechanisms. While all reports of violence against children should be appropriately investigated and their protection from significant harm assured, the aim should be to stop parents from using violent or other cruel or degrading punishments through supportive and educational, not punitive, interventions.

41. Children's dependent status and the unique intimacy of family relations demand that decisions to prosecute parents, or to formally intervene in the family in other ways, should be taken with very great care. Prosecuting parents is in most cases unlikely to be in their children's best interests. It is the Committee's view that prosecution and other formal interventions (for example, to remove the child or remove the perpetrator) should only proceed when they are regarded both as necessary to protect the child from significant harm and as being in the best interests of the affected child. The views of the affected child should be given due weight, according to his or her age and maturity.

42. Advice and training for all those involved in child protection systems, including the police, prosecuting authorities and the courts, should underline this approach to enforcement of the law. Guidance should also emphasize that article 9 of the Convention requires that any separation of the child from his or her parents must be deemed necessary in the best interests of the child and be subject to judicial review, in accordance with applicable law and procedures, with all interested parties, including the child, represented. Where separation is deemed to be justified, alternatives to placement of the child outside the family should be considered, including removal of the perpetrator, suspended sentencing, and so on.

43. Where, despite prohibition and positive education and training programmes, cases of corporal punishment come to light outside the family home - in schools, other institutions and forms of alternative care, for example - prosecution may be a reasonable response. The threat to the perpetrator of other disciplinary action or dismissal should also act as a clear deterrent. It is essential that the prohibition of all corporal punishment and other cruel or degrading punishment, and the sanctions that may be imposed if it is inflicted, should be well disseminated to children and to all those working with or for children in all settings. Monitoring disciplinary systems and the treatment of children must be part of the sustained supervision of all institutions and placements which is required by the Convention. Children and their representatives in all such placements must have immediate and confidential access to child-sensitive advice, advocacy and complaints procedures and ultimately to the courts, with necessary legal and other assistance. In institutions, there should be a requirement to report and to review any violent incidents.

C. Educational and other measures

44. Article 12 of the Convention underlines the importance of giving due consideration to children's views on the development and implementation of educational and other measures to eradicate corporal punishment and other cruel or degrading forms of punishment.

45. Given the widespread traditional acceptance of corporal punishment, prohibition on its own will not achieve the necessary change in attitudes and practice. Comprehensive awareness-raising of children's right to protection and of the laws that reflect this right is required. Under article 42 of the Convention, States undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

46. In addition, States must ensure that positive, non-violent relationships and education are consistently promoted to parents, carers, teachers and all others who work with children and families. The Committee emphasizes that the Convention requires the elimination not only of corporal punishment but of all other cruel or degrading punishment of children. It is not for the Convention to prescribe in detail how parents should relate to or guide their children. But the Convention does provide a framework of principles to guide relationships both within the family, and between teachers, carers and others and children. Children's developmental needs must be respected. Children learn from what adults do, not only from what adults say. When the adults to whom a child most closely relates use violence and humiliation in their relationship with the child, they are demonstrating disrespect for human rights and teaching a potent and dangerous lesson that these are legitimate ways to seek to resolve conflict or change behaviour.

47. The Convention asserts the status of the child as an individual person and holder of human rights. The child is not a possession of parents, nor of the State, nor simply an object of concern. In this spirit, article 5 requires parents (or, where applicable, members of the extended family or community) to provide the child with appropriate direction and guidance, in a manner consistent with his/her evolving capacities, in the exercise by the child of the rights recognized in the Convention. Article 18, which underlines the primary responsibility of parents, or legal guardians, for the upbringing and development of the child, states that "the best interests of the child will be their basic concern". Under article 12, States are required to assure children the right to express their views freely "in all matters affecting the child", with the views of the child being given due weight in accordance with age and maturity. This emphasizes the need for styles of parenting, caring and teaching that respect children's participation rights. In its general comment No. 1 (2001) on the aims of education, the Committee has emphasized the importance of developing education that is "child-centred, child-friendly and empowering".[p]

48. The Committee notes that there are now many examples of materials and programmes promoting positive, non-violent forms of parenting and education, addressed to parents, other carers and teachers and developed by Governments, United Nations agencies, NGOs and others.[q] These can be appropriately adapted for use in different States and situations. The media can play a very valuable role in awareness-raising and public education. Challenging traditional dependence on corporal punishment and other cruel or degrading forms of discipline requires sustained action. The promotion of non-violent forms of parenting and education should be built into all the points of contact between the State and parents and children, in health, welfare and educational services, including early childhood institutions, day-care centres and schools. It should also be integrated into the initial and in-service training of teachers and all those working with children in care and justice systems.

49. The Committee proposes that States may wish to seek technical assistance from, among others, the United Nations Children's Fund (UNICEF) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) concerning awareness-raising, public education and training to promote non-violent approaches.

D. Monitoring and evaluation

50. The Committee, in its general comment No. 5 (2003) on general measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), emphasizes the need for systematic monitoring by States parties of the realization of children's rights, through the development of appropriate indicators and the collection of sufficient and reliable data.[r]

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[p] See note f above.

[q] The Committee commends, as one example, UNESCO handbook, *Eliminating corporal punishment: the way forward to constructive child discipline*, UNESCO Publishing, Paris, 2005. This provides a set of principles for constructive discipline, rooted in the Convention. It also includes Internet references to materials and programmes available worldwide.

[r] Committee on the Rights of the Child, general comment No. 5 (2003), "General measures of implementation for the Convention on the Rights of the Child", para. 2.

51. Therefore States parties should monitor their progress towards eliminating corporal punishment and other cruel or degrading forms of punishment and thus realizing children's right to protection. Research using interviews with children, their parents and other carers, in conditions of confidentiality and with appropriate ethical safeguards, is essential in order to accurately assess the prevalence of these forms of violence within the family and attitudes to them. The Committee encourages every State to carry out/commission such research, as far as possible with groups representative of the whole population, to provide baseline information and then at regular intervals to measure progress. The results of this research can also provide valuable guidance for the development of universal and targeted awareness-raising campaigns and training for professionals working with or for children.

52. The Committee also underlines in its general comment No. 5 (2003) the importance of independent monitoring of implementation by, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups and independent human rights institutions (see also the Committee's general comment No. 2 (2002) on "The role of independent national human rights institutions in the protection and promotion of the rights of the child"). These could all play an important role in monitoring the realization of children's right to protection from all corporal punishment and other cruel or degrading forms of punishment.

VI. REPORTING REQUIREMENTS UNDER THE CONVENTION

53. The Committee expects States to include in their periodic reports under the Convention information on the measures taken to prohibit and prevent all corporal punishment and other cruel or degrading forms of punishment in the family and all other settings, including on related awareness-raising activities and promotion of positive, non-violent relationships and on the State's evaluation of progress towards achieving full respect for children's rights to protection from all forms of violence. The Committee also encourages United Nations agencies, national human rights institutions, NGOs and other competent bodies to provide it with relevant information on the legal status and prevalence of corporal punishment and progress towards its elimination.

Annex III

GENERAL COMMENT No. 9 (2006)

The rights of children with disabilities

I. INTRODUCTION

A. Why a general comment on children with disabilities?

1. It is estimated that there are 500-650 million persons with disabilities in the world, approximately 10 per cent of the world population, 150 million of whom are children. More than 80 per cent live in developing countries with little or no access to services. The majority of children with disabilities in developing countries remain out of school and are completely illiterate. It is recognized that most of the causes of disabilities, such as war, illness and poverty, are preventable which also prevent and/or reduce the secondary impacts of disabilities, often caused by the lack of early/timely intervention. Therefore, more should be done to create the necessary political will and real commitment to investigate and put into practice the most effective actions to prevent disabilities with the participation of all levels of society.

2. The past few decades have witnessed positive focus on persons with disabilities in general and children in particular. The reason for this new focus is explained partly by the fact that the voice of persons with disabilities and their advocates from national and international non-governmental organizations (NGOs) is being increasingly heard and partly by the growing attention paid to persons with disabilities within the framework of the human rights treaties and the United Nations human rights treaty bodies. These treaty bodies have considerable potential in advancing the rights of persons with disabilities but they have generally been underused. When adopted in November 1989 the Convention on the Rights of the Child ("the Convention") was the first human rights treaty that contained a specific reference to disability (article 2 on non-discrimination) and a separate article 23 exclusively dedicated to the rights and needs of children with disabilities. Since the Convention entered into force (2 September 1990), the Committee on the Rights of the Child ("the Committee") has paid sustained and particular attention to disability-based discrimination[a] while other human rights treaty bodies have paid attention to disability-based discrimination under "other status" in the context of articles on non-discrimination of their relevant convention. In 1994 the Committee on Economic, Social and Cultural Rights issued its general comment No. 5 on persons with disabilities and stated in paragraph 15 that "The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services". The Special Rapporteur on disability of the United Nations Commission for Social Development was first appointed in 1994 and mandated to monitor the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the General Assembly at its forty-eighth session in 1993 (resolution 48/96, annex), and to advance the status of persons with disabilities throughout the world. On 6 October 1997 the Committee devoted its day of

[a] See Wouter Vandenhole, *Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies*, pp.170-172, Antwerpen/Oxford, Intersentia 2005.

general discussion to children with disabilities and adopted a set of recommendations,[b] in which it considered the possibility of drafting a general comment on children with disabilities. The Committee notes with appreciation the work of the Ad-Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, and that it adopted at its eighth session, held in New York on 25 August 2006, a draft convention on the rights of persons with disabilities to be submitted to the General Assembly at its sixty-first session.[c]

3. The Committee, in reviewing State party reports, has accumulated a wealth of information on the status of children with disabilities worldwide and found that in the overwhelming majority of countries some recommendations had to be made specifically to address the situation of children with disabilities. The problems identified and addressed have varied from exclusion from decision-making processes to severe discrimination and actual killing of children with disabilities. Poverty being both a cause and a consequence of disability, the Committee has repeatedly stressed that children with disabilities and their families have the right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of their living conditions. The question of children with disabilities living in poverty should be addressed by allocating adequate budgetary resources as well as by ensuring that children with disabilities have access to social protection and poverty reduction programmes.

4. The Committee has noted that no reservations or declarations have been entered specifically to article 23 of the Convention by any State party.

5. The Committee also notes that children with disabilities are still experiencing serious difficulties and facing barriers to the full enjoyment of the rights enshrined in the Convention. The Committee emphasizes that the barrier is not the disability itself but rather a combination of social, cultural, attitudinal and physical obstacles which children with disabilities encounter in their daily lives. The strategy for promoting their rights is therefore to take the necessary action to remove those barriers. Acknowledging the importance of articles 2 and 23 of the Convention, the Committee states from the outset that the implementation of the Convention with regards to children with disabilities should not be limited to these articles.

6. The present general comment is meant to provide guidance and assistance to States parties in their efforts to implement the rights of children with disabilities, in a comprehensive manner which covers all the provisions of the Convention. Thus, the Committee will first make some observations related directly to articles 2 and 23, then it will elaborate on the necessity of paying particular attention to and including explicitly children with disabilities within the framework of general measures for the implementation of the Convention. Those observations will be followed by comments on the meaning and the implementation of the various articles of the Convention (clustered in accordance with the Committee's practice) for children with disabilities.

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[b] CRC/C/66, paras. 310-339.

[c] A/AC.265/2006/4, annex II.

B. Definition

7. According to article 1, paragraph 2, of the draft convention on the rights of persons with disabilities, "Persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."[d]

II. THE KEY PROVISIONS FOR CHILDREN WITH DISABILITIES (arts. 2 and 23)

A. Article 2

8. Article 2 requires States parties to ensure that all children within their jurisdiction enjoy all the rights enshrined in the Convention without discrimination of any kind. This obligation requires States parties to take appropriate measures to prevent all forms of discrimination, including on the ground of disability. This explicit mention of disability as a prohibited ground for discrimination in article 2 is unique and can be explained by the fact that children with disabilities belong to one of the most vulnerable groups of children. In many cases forms of multiple discrimination - based on a combination of factors, i.e. indigenous girls with disabilities, children with disabilities living in rural areas and so on - increase the vulnerability of certain groups. It has been therefore felt necessary to mention disability explicitly in the non-discrimination article. Discrimination takes place - often de facto - in various aspects of the life and development of children with disabilities. As an example, social discrimination and stigmatization leads to their marginalization and exclusion, and may even threaten their survival and development if it goes as far as physical or mental violence against children with disabilities. Discrimination in service provision excludes them from education and denies them access to quality health and social services. The lack of appropriate education and vocational training discriminates against them by denying them job opportunities in the future. Social stigma, fears, overprotection, negative attitudes, misbeliefs and prevailing prejudices against children with disabilities remain strong in many communities and lead to the marginalization and alienation of children with disabilities. The Committee shall elaborate on these aspects in the paragraphs below.

9. In general, States parties in their efforts to prevent and eliminate all forms of discrimination against children with disabilities should take the following measures:

(a) Include explicitly disability as a forbidden ground for discrimination in constitutional provisions on non-discrimination and/or include specific prohibition of discrimination on the ground of disability in specific anti-discrimination laws or legal provisions;

(b) Provide for effective remedies in case of violations of the rights of children with disabilities, and ensure that those remedies are easily accessible to children with disabilities and their parents and/or others caring for the child;

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[d] A/AC.265/2006/4, annex II.

(c) Conduct awareness-raising and educational campaigns targeting the public at large and specific groups of professionals with a view to preventing and eliminating de facto discrimination against children with disabilities.

10. Girls with disabilities are often even more vulnerable to discrimination due to gender discrimination. In this context, States parties are requested to pay particular attention to girls with disabilities by taking the necessary measures, and when needed extra measures, in order to ensure that they are well protected, have access to all services and are fully included in society.

B. Article 23

11. Paragraph 1 of article 23 should be considered as the leading principle for the implementation of the Convention with respect to children with disabilities: the enjoyment of a full and decent life in conditions that ensure dignity, promote self reliance and facilitate active participation in the community. The measures taken by States parties regarding the realization of the rights of children with disabilities should be directed towards this goal. The core message of this paragraph is that children with disabilities should be included in the society. Measures taken for the implementation of the rights contained in the Convention regarding children with disabilities, for example in the areas of education and health, should explicitly aim at the maximum inclusion of those children in society.

12. According to paragraph 2 of article 23 States parties to the Convention recognize the right of the child with disability to special care and shall encourage and ensure the extension of assistance to the eligible child and those responsible for his or her care. The assistance has to be appropriate to the child's condition and the circumstances of the parents or others caring for the child. Paragraph 3 of article 23 gives further rules regarding the costs of specific measures and precisions as to what the assistance should try to achieve.

13. In order to meet the requirements of article 23 it is necessary that States parties develop and effectively implement a comprehensive policy by means of a plan of action which not only aims at the full enjoyment of the rights enshrined in the Convention without discrimination but which also ensures that a child with disability and her or his parents and/or others caring for the child do receive the special care and assistance they are entitled to under the Convention.

14. Regarding the specifics of paragraphs 2 and 3 of article 23, the Committee makes the following observations:

(a) The provision of special care and assistance is subject to available resources and free of charge whenever possible. The Committee urges States parties to make special care and assistance to children with disabilities a matter of high priority and to invest to the maximum extent of available resources in the elimination of discrimination against children with disabilities and towards their maximum inclusion in society;

(b) Care and assistance shall be designed to ensure that children with disabilities have effective access to and benefit from education, training, health-care services, recovery services, preparation for employment and recreation opportunities. The Committee when dealing with specific articles of the Convention will elaborate on the measures necessary to achieve this.

15. With reference to article 23, paragraph 4, the Committee notes that the international exchange of information between States parties in the areas of prevention and treatment is quite limited. The Committee recommends that States parties take effective, and where appropriate targeted, measures for an active promotion of information as envisaged by article 23, paragraph 4, in order to enable States parties to improve their capabilities and skills in the areas of prevention and treatment of disabilities of children.

16. It is often not clear how and to which degree the needs of developing countries are taken into account as required by article 23, paragraph 4. The Committee strongly recommends States parties to ensure that, within the framework of bilateral or multilateral development assistance, particular attention be paid to children with disabilities and their survival and development in accordance with the provisions of the Convention, for example, by developing and implementing special programmes aiming at their inclusion in society and allocating earmarked budgets to that effect. States parties are invited to provide information in their reports to the Committee on the activities and results of such international cooperation.

III. GENERAL MEASURES OF IMPLEMENTATION (arts. 4, 42 and 44, para. 6)[e]

A. Legislation

17. In addition to the legislative measures recommended with regard to non-discrimination (see paragraph 9 above), the Committee recommends that States parties undertake a comprehensive review of all domestic laws and related regulations in order to ensure that all provisions of the Convention are applicable to all children, including children with disabilities who should be mentioned explicitly, where appropriate. National laws and regulations should contain clear and explicit provisions for the protection and exercise of the specific rights of children with disabilities, in particular those enshrined in article 23 of the Convention.

B. National plans of action and policies

18. The need for a national plan of action that integrates all the provisions of the Convention is a well-recognized fact and has often been a recommendation made by the Committee to States parties. Plans of action must be comprehensive, including plans and strategies for children with disabilities, and should have measurable outcomes. The draft convention on the rights of persons with disabilities, in its article 4, paragraph 1 (c), emphasizes the importance of inclusion of this aspect stating that States parties undertake "to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes".[f] It is also essential that all programmes be adequately supplied with financial and human resources and equipped

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[e] In the present general comment the Committee focuses on the need to pay special attention to children with disabilities in the context of the general measures. For a more elaborated explanation of the content and importance of these measures, see the Committee's general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child.

[f] A/AC.265/2006/4, annex II.

with built-in monitoring mechanisms, for example, indicators allowing accurate outcome measurements. Another factor that should not be overlooked is the importance of including all children with disabilities in policies and programmes. Some States parties have initiated excellent programmes, but failed to include all children with disabilities.

C. Data and statistics

19. In order to fulfil their obligations, it is necessary for States parties to set up and develop mechanisms for collecting data which are accurate, standardized and allow disaggregation, and which reflect the actual situation of children with disabilities. The importance of this issue is often overlooked and not viewed as a priority despite the fact that it has an impact not only on the measures that need to be taken in terms of prevention but also on the distribution of very valuable resources needed to fund programmes. One of the main challenges in obtaining accurate statistics is the lack of a widely accepted clear definition for disabilities. States parties are encouraged to establish an appropriate definition that guarantees the inclusion of all children with disabilities so that children with disabilities may benefit from the special protection and programmes developed for them. Extra efforts are often needed to collect data on children with disabilities because they are often hidden by their parents or others caring for the child.

D. Budget

20. In the light of article 4 "... States parties shall undertake such measures to the maximum extent of their available resources ...". Although the Convention does not make a specific recommendation regarding the most appropriate percentage of the State budget that should be dedicated to services and programmes for children, it does insist that children should be a priority. The implementation of this right has been a concern to the Committee since many States parties not only do not allocate sufficient resources but have also reduced the budget allocated to children over the years. This trend has many serious implications especially for children with disabilities who often rank quite low, or even not at all, on priority lists. For example, if a State party is failing to allocate sufficient funds to ensure compulsory and free quality education for all children, it will be unlikely to allocate funds to train teachers for children with disabilities or to provide for the necessary teaching aids and transportation for children with disabilities. Decentralization and privatization of services are now means of economic reform. However, it should not be forgotten that it is the ultimate responsibility of the State party to oversee that adequate funds are allocated to children with disabilities along with strict guidelines for service delivery. Resources allocated to children with disabilities should be sufficient - and earmarked so that they are not used for other purposes - to cover all their needs, including programmes established for training professionals working with children with disabilities such as teachers, physiotherapists and policymakers; education campaigns; financial support for families; income maintenance; social security; assistive devices; and related services. Furthermore, funding must also be ensured for other programmes aimed at including children with disabilities into mainstream education, inter alia by renovating schools to render them physically accessible to children with disabilities.

E. Coordination body: "Focal point for disabilities"

21. Services for children with disabilities are often delivered by various governmental and non-governmental institutions and, more often than not, these services are fragmented and not coordinated which result in overlapping of functions and gaps in provisions. Therefore, the

setting up of an appropriate coordinating mechanism becomes essential. This body should be multisectoral, including all organizations public or private. It must be empowered and supported from the highest possible levels of Government to allow it to function at its full potential. A coordination body for children with disabilities, as part of a broader coordination system for the rights of the child or a national coordination system for persons with disabilities, would have the advantage of working within an already established system, provided this system is functioning adequately and capable of devoting the adequate financial and human resources necessary. On the other hand, a separate coordination system may help to focus attention on children with disabilities.

F. International cooperation and technical assistance

22. In order to make information among States parties freely accessible and to cultivate an atmosphere of knowledge-sharing concerning, inter alia, the management and rehabilitation of children with disabilities, States parties should recognize the importance of international cooperation and technical assistance. Particular attention should be paid to developing countries that need assistance in setting up and/or funding programmes that protect and promote the rights of children with disabilities. These countries are experiencing increasing difficulties in mobilizing the adequate resources to meet the pressing needs of persons with disabilities and would urgently need assistance in the prevention of disability, the provision of services and rehabilitation, and in the equalization of opportunities. However, in order to respond to these growing needs, the international community should explore new ways and means of raising funds, including substantial increase of resources, and take the necessary follow-up measures for mobilizing resources. Therefore, voluntary contributions from Governments, increased regional and bilateral assistance as well as contributions from private sources should also be encouraged. The United Nations Children's Fund (UNICEF) and the World Health Organization (WHO) have been instrumental in helping developing countries set up and implement specific programmes for children with disabilities. The process of knowledge exchange is also valuable in sharing updated medical knowledge and good practices, such as early identification and community-based approaches to early intervention and support to families, and addressing common challenges.

23. Countries that have endured, or continue to endure, internal or foreign conflict, during which land mines were laid, face a particular challenge. States parties are often not privy to plans of the sites where the land mines and unexploded ordnance were planted and the cost of mine clearance is very high. The Committee emphasizes the importance of international cooperation in accordance with the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, in order to prevent injuries and deaths caused by landmines and unexploded ordnance that remain in place. In this regard the Committee recommends that States parties closely cooperate with a view to completely removing all landmines and unexploded ordnance in areas of armed conflict and/or previous armed conflict.

G. Independent monitoring

24. Both the Convention and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities recognize the importance of the establishment of an appropriate

monitoring system.[g] The Committee has very often referred to "the Paris Principles" (General Assembly resolution 48/134) as the guidelines which national human rights institutions should follow (see the Committee's general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child). National human rights institutions can take many shapes or forms such as an Ombudsman or a Commissioner and may be broad-based or specific. Whatever mechanism is chosen, it must be:

(a) Independent and provided with adequate human and financial resources;

(b) Well known to children with disabilities and their caregivers;

(c) Accessible not only in the physical sense but also in a way that allows children with disabilities to send in their complaints or issues easily and confidentially; and

(d) It must have the appropriate legal authority to receive, investigate and address the complaints of children with disabilities in a manner sensitive to both their childhood and to their disabilities.

H. Civil society

25. Although caring for children with disabilities is an obligation of the State, NGOs often carry out these responsibilities without the appropriate support, funding or recognition from Governments. States parties are therefore encouraged to support and cooperate with NGOs enabling them to participate in the provision of services for children with disabilities and to ensure that they operate in full compliance with the provisions and principles of the Convention. In this regard the Committee draws the attention of States parties to the recommendations adopted on its day of general discussion on the private sector as a service provider, held on 20 September 2002.[h]

I. Dissemination of knowledge and training of professionals

26. Knowledge of the Convention and its specific provisions devoted to children with disabilities is a necessary and powerful tool to ensure the realization of these rights. States parties are encouraged to disseminate knowledge by, inter alia, conducting systematic awareness-raising campaigns, producing appropriate material, such as a child friendly version of the Convention in print and Braille, and using the mass media to foster positive attitudes towards children with disabilities.

27. As for professionals working with and for children with disabilities, training programmes must include targeted and focused education on the rights of children with disabilities as a prerequisite for qualification. These professionals include but are not limited to policymakers, judges, lawyers, law enforcement officers, educators, health workers, social workers and media staff among others.

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[g] See also the general comment No. 5 (1994) of the Committee on Economic, Social and Cultural Rights regarding persons with disabilities.

[h] CRC/C/121, paras. 630-653.

IV. GENERAL PRINCIPLES

Article 2 - Non-discrimination

28. See paragraphs 8 to 10 above.

Article 3 - Best interests of the child

29. "In all actions concerning children … the best interests of the child shall be a primary consideration." The broad nature of this article aims at covering all aspects of care and protection for children in all settings. It addresses legislators who are entrusted with setting the legal framework for protecting the rights of children with disabilities as well as the decision-making processes concerning children with disabilities. Article 3 should be the basis on which programmes and policies are set and it should be duly taken into account in every service provided for children with disabilities and any other action affecting them.

30. The best interests of the child is of particular relevance in institutions and other facilities that provide services for children with disabilities as they are expected to conform to standards and regulations and should have the safety, protection and care of children as their primary consideration, and this consideration should outweigh any other and under all circumstances, for example, when allocating budgets.

Article 6 - Right to life, survival and development

31. The inherent right to life, survival and development is a right that warrants particular attention where children with disabilities are concerned. In many countries of the world children with disabilities are subject to a variety of practices that completely or partially compromise this right. In addition to being more vulnerable to infanticide, some cultures view a child with any form of disability as a bad omen that may "tarnish the family pedigree" and, accordingly, a certain designated individual from the community systematically kills children with disabilities. These crimes often go unpunished or perpetrators receive reduced sentences. States parties are urged to undertake all the necessary measures required to put an end to these practices, including raising public awareness, setting up appropriate legislation and enforcing laws that ensure appropriate punishment to all those who directly or indirectly violate the right to life, survival and development of children with disabilities.

Article 12 - Respect for the views of the child

32. More often than not, adults with and without disabilities make policies and decisions related to children with disabilities while the children themselves are left out of the process. It is essential that children with disabilities be heard in all procedures affecting them and that their views be respected in accordance with their evolving capacities. In order for this principle to be respected, children should be represented in various bodies such as parliament, committees and other forums where they may voice views and participate in the making of decisions that affect them as children in general and as children with disabilities specifically. Engaging children in such a process not only ensures that the policies are targeted to their needs and desires, but also

functions as a valuable tool for inclusion since it ensures that the decision-making process is a participatory one. Children should be provided with whatever mode of communication they need to facilitate expressing their views. Furthermore, States parties should support the training for families and professionals on promoting and respecting the evolving capacities of children to take increasing responsibilities for decision-making in their own lives.

33. Children with disabilities often require special services in health and education to allow them to achieve their fullest potential and these are further discussed in the relevant paragraphs below. However it should be noted that spiritual, emotional and cultural development and well-being of children with disabilities are very often overlooked. Their participation in events and activities catering to these essential aspects of any child's life is either totally lacking or minimal. Furthermore, when their participation is invited, it is often limited to activities specifically designed for and targeted at children with disabilities. This practice only leads to further marginalization of children with disabilities and increases their feelings of isolation. Programmes and activities designed for the child's cultural development and spiritual well-being should involve and cater to both children with and without disabilities in an integrated and participatory fashion.

V. CIVIL RIGHTS AND FREEDOMS
(arts. 7, 8, 13-17, and 37 (a))

34. The right to name and nationality, preservation of identity, freedom of expression, freedom of thought, conscience and religion, freedom of association and peaceful assembly, the right to privacy and the right not to be subjected to torture or other cruel inhuman or degrading treatment or punishment and not to be unlawfully deprived of liberty are all universal civil rights and freedoms which must be respected, protected and promoted for all, including children with disabilities. Particular attention should be paid here on areas where the rights of children with disabilities are more likely to be violated or where special programmes are needed for their protection.

A. Birth registration

35. Children with disabilities are disproportionately vulnerable to non-registration at birth. Without birth registration they are not recognized by law and become invisible in government statistics. Non-registration has profound consequences for the enjoyment of their human rights, including the lack of citizenship and access to social and health services and to education. Children with disabilities who are not registered at birth are at greater risk of neglect, institutionalization, and even death.

36. In the light of article 7 of the Convention, the Committee recommends that States parties adopt all appropriate measures to ensure the registration of children with disabilities at birth. Such measures should include developing and implementing an effective system of birth registration, waiving registration fees, introducing mobile registration offices and, for children who are not yet registered, providing registration units in schools. In this context, States parties should ensure that the provisions of article 7 are fully enforced in conformity with the principles of non-discrimination (art. 2) and of the best interests of the child (art. 3).

B. Access to appropriate information and mass media

37. Access to information and means of communication, including information and communication technologies and systems, enables children with disabilities to live independently and participate fully in all aspects of life. Children with disabilities and their caregivers should have access to information concerning their disabilities so that they can be adequately educated on the disability, including its causes, management and prognosis. This knowledge is extremely valuable as it does not only enable them to adjust and live better with their disabilities, but also allows them to be more involved in and to make informed decisions about their own care. Children with disabilities should also be provided with the appropriate technology and other services and/or languages, e.g. Braille and sign language, which would enable them to have access to all forms of media, including television, radio and printed material as well as new information and communication technologies and systems, such as the Internet.

38. On the other hand, States parties are required to protect all children, including children with disabilities from harmful information, especially pornographic material and material that promotes xenophobia or any other form of discrimination and could potentially reinforce prejudices.

C. Accessibility to public transportation and facilities

39. The physical inaccessibility of public transportation and other facilities, including governmental buildings, shopping areas, recreational facilities among others, is a major factor in the marginalization and exclusion of children with disabilities and markedly compromises their access to services, including health and education. Although this provision may be mostly realized in developed countries, it remains largely unaddressed in the developing world. All States parties are urged to set out appropriate policies and procedures to make public transportation safe, easily accessible to children with disabilities, and free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child.

40. All new public buildings should comply with international specifications for access of persons with disabilities and existing public buildings, including schools, health facilities, governmental buildings, shopping areas, undergo necessary alterations that make them as accessible as possible.

VI. FAMILY ENVIRONMENT AND ALTERNATIVE CARE (arts. 5, 18, paras. 1-2, 9-11, 19-21, 25, 27, para. 4, and 39)

A. Family support and parental responsibilities

41. Children with disabilities are best cared for and nurtured within their own family environment provided that the family is adequately provided for in all aspects. Such support to families includes education of parent/s and siblings, not only on the disability and its causes but also on each child's unique physical and mental requirements; psychological support that is sensitive to the stress and difficulties imposed on families of children with disabilities; education on the family's common language, for example sign language, so that parents and siblings can communicate with family members with disabilities; material support in the form of special allowances as well as consumable supplies and necessary equipment, such as special furniture

and mobility devices that is deemed necessary for the child with a disability to live a dignified, self-reliant lifestyle, and be fully included in the family and community. In this context, support should also be extended to children who are affected by the disabilities of their caregivers. For example, a child living with a parent or other caregiver with disabilities should receive the support that would protect fully his or her rights and allow him or her to continue to live with this parent whenever it is in his or her best interests. Support services should also include different forms of respite care, such as care assistance in the home and day-care facilities directly accessible at community level. Such services enable parents to work, as well as relieve stress and maintain healthy family environments.

B. Violence, abuse and neglect

42. Children with disabilities are more vulnerable to all forms of abuse be it mental, physical or sexual in all settings, including the family, schools, private and public institutions, inter alia alternative care, work environment and community at large. It is often quoted that children with disabilities are five times more likely to be victims of abuse. In the home and in institutions, children with disabilities are often subjected to mental and physical violence and sexual abuse, and they are also particularly vulnerable to neglect and negligent treatment since they often present an extra physical and financial burden on the family. In addition, the lack of access to a functional complaint receiving and monitoring mechanism is conducive to systematic and continuing abuse. School bullying is a particular form of violence that children are exposed to and more often than not, this form of abuse targets children with disabilities. Their particular vulnerability may be explained inter alia by the following main reasons:

(a) Their inability to hear, move, and dress, toilet, and bath independently increases their vulnerability to intrusive personal care or abuse;

(b) Living in isolation from parents, siblings, extended family and friends increases the likelihood of abuse;

(c) Should they have communication or intellectual impairments, they may be ignored, disbelieved or misunderstood should they complain about abuse;

(d) Parents or others taking care of the child may be under considerable pressure or stress because of physical, financial and emotional issues in caring for their child. Studies indicate that those under stress may be more likely to commit abuse;

(e) Children with disabilities are often wrongly perceived as being non-sexual and not having an understanding of their own bodies and, therefore, they can be targets of abusive people, particularly those who base abuse on sexuality.

43. In addressing the issue of violence and abuse, States parties are urged to take all necessary measures for the prevention of abuse of and violence against children with disabilities, such as:

(a) Train and educate parents or others caring for the child to understand the risks and detect the signs of abuse of the child;

(b) Ensure that parents are vigilant about choosing caregivers and facilities for their children and improve their ability to detect abuse;

(c) Provide and encourage support groups for parents, siblings and others taking care of the child to assist them in caring for their children and coping with their disabilities;

(d) Ensure that children and caregivers know that the child is entitled as a matter of right to be treated with dignity and respect and they have the right to complain to appropriate authorities if those rights are breached;

(e) Ensure that schools take all measures to combat school bullying and pay particular attention to children with disabilities providing them with the necessary protection while maintaining their inclusion into the mainstream education system;

(f) Ensure that institutions providing care for children with disabilities are staffed with specially trained personnel, subject to appropriate standards, regularly monitored and evaluated, and have accessible and sensitive complaint mechanisms;

(g) Establish an accessible, child-sensitive complaint mechanism and a functioning monitoring system based on the Paris Principles (see paragraph 24 above);

(h) Take all necessary legislative measures required to punish and remove perpetrators from the home ensuring that the child is not deprived of his or her family and continue to live in a safe and healthy environment;

(i) Ensure the treatment and reintegration of victims of abuse and violence with a special focus on their overall recovery programmes.

44. In this context the Committee would also like to draw States parties' attention to the report of the independent expert for the United Nations study on violence against children[1] which refers to children with disabilities as a group of children especially vulnerable to violence. The Committee encourages States parties to take all appropriate measures to implement the overarching recommendations and setting-specific recommendations contained in this report.

C. Family-type alternative care

45. The role of the extended family, which is still a main pillar of childcare in many communities and is considered one of the best alternatives for childcare, should be strengthened and empowered to support the child and his or her parents or others taking care of the child.

46. Recognizing that the foster family is an accepted and practiced form of alternative care in many States parties, it is nevertheless a fact that many foster families are reluctant to take on the care of a child with disability as children with disabilities often pose a challenge in the extra care

[1] A/61/299.

they may need and the special requirements in their physical, psychological and mental upbringing. Organizations that are responsible for foster placement of children must, therefore, conduct the necessary training and encouragement of suitable families and provide the support that will allow the foster family to appropriately take care of the child with disability.

D. Institutions

47. The Committee has often expressed its concern at the high number of children with disabilities placed in institutions and that institutionalization is the preferred placement option in many countries. The quality of care provided, whether educational, medical or rehabilitative, is often much inferior to the standards necessary for the care of children with disabilities either because of lack of identified standards or lack of implementation and monitoring of these standards. Institutions are also a particular setting where children with disabilities are more vulnerable to mental, physical, sexual and other forms of abuse as well as neglect and negligent treatment (see paragraphs 42-44 above). The Committee therefore urges States parties to use the placement in institution only as a measure of last resort, when it is absolutely necessary and in the best interests of the child. It recommends that the States parties prevent the use of placement in institution merely with the goal of limiting the child's liberty or freedom of movement. In addition, attention should be paid to transforming existing institutions, with a focus on small residential care facilities organized around the rights and needs of the child, to developing national standards for care in institutions, and to establishing rigorous screening and monitoring procedures to ensure effective implementation of these standards.

48. The Committee is concerned at the fact that children with disabilities are not often heard in separation and placement processes. In general, decision-making processes do not attach enough weight to children as partners even though these decisions have a far-reaching impact on the child's life and future. Therefore, the Committee recommends that States parties continue and strengthen their efforts to take into consideration the views of children with disabilities and facilitate their participation in all matters affecting them within the evaluation, separation and placement process in out-of-home care, and during the transition process. The Committee also emphasizes that children should be heard throughout the protection measure process, before making the decision as well as during and after its implementation. In this context, the Committee draws the attention of the States parties to the Committee's recommendations adopted on its day of general discussion on children without parental care, held on 16 September 2005.[j]

49. In addressing institutionalization, States parties are therefore urged to set up programmes for deinstitutionalization of children with disabilities, replacing them with their families, extended families or foster care system. Parents and other extended family members should be provided with the necessary and systematic support/training for including their child back into their home environment.

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[j] CRC/C/153, paras. 636-689.

E. Periodic review of placement

50. Whatever form of placement chosen for children with disabilities by the competent authorities, it is essential that a periodic review of the treatment provided to the child, and all other circumstances relevant to his or her placement, is carried out to monitor his or her well-being.

VII. BASIC HEALTH AND WELFARE (arts. 6, 18, paras. 3, 23, 24, 26, and 27, paras. 1-3)

A. Right to health

51. Attainment of the highest possible standard of health as well as access and affordability of quality health care is an inherent right for all children. Children with disabilities are often left out because of several challenges, including discrimination, inaccessibility due to the lack of information and/or financial resources, transportation, geographic distribution and physical access to health-care facilities. Another factor is the absence of targeted health-care programmes that address the specific needs of children with disabilities. Health policies should be comprehensive and address early detection of disabilities, early intervention, including psychological and physical treatment, rehabilitation including physical aids, for example limb prosthesis, mobility devices, hearing aids and visual aids.

52. It is important to emphasize that health services should be provided within the same public health system that provides for children with no disabilities, free of charge, whenever possible, and as updated and modernized as possible. The importance of community-based assistance and rehabilitation strategies should be emphasized when providing health services for children with disabilities. States parties must ensure that health professionals working with children with disabilities are trained to the highest possible standard and practice based on a child-centred approach. In this respect, many States parties would greatly benefit from international cooperation with international organizations as well as other States parties.

B. Prevention

53. Causes of disabilities are multiple and, therefore, the quality and level of prevention vary. Inherited diseases that often cause disabilities can be prevented in some societies that practice consanguineous marriages and under such circumstances public awareness and appropriate preconception testing would be recommended. Communicable diseases are still the cause of many disabilities around the world and immunization programmes need to be stepped up aiming to achieve universal immunization against all preventable communicable diseases. Poor nutrition has a long-term impact upon children's development and it can lead to disabilities, such as blindness caused by Vitamin A deficiency. The Committee recommends that States parties introduce and strengthen prenatal care for children and ensure adequate quality of the assistance given during the delivery. It also recommends that States parties provide adequate post-natal health-care services and develop campaigns to inform parents and others caring for the child about basic child health care and nutrition. In this regard, the Committee also recommends that the States parties continue to cooperate and seek technical assistance with, among others, WHO and UNICEF.

54. Domestic and road traffic accidents are a major cause of disability in some countries and policies of prevention need to be established and implemented such as the laws on seat belts and traffic safety. Lifestyle issues, such as alcohol and drug abuse during pregnancy, are also preventable causes of disabilities and in some countries the fetal alcohol syndrome presents a major cause for concern. Public education, identification and support for pregnant mothers who may be abusing such substances are just some of the measures that may be taken to prevent such causes of disability among children. Hazardous environment toxins also contribute to the causes of many disabilities. Toxins, such as lead, mercury, asbestos, etc., are commonly found in most countries. Countries should establish and implement policies to prevent dumping of hazardous materials and other means of polluting the environment. Furthermore, strict guidelines and safeguards should also be established to prevent radiation accidents.

55. Armed conflicts and their aftermath, including availability and accessibility of small arms and light weapons, are also major causes of disabilities. States parties are obliged to take all necessary measures to protect children from the detrimental effects of war and armed violence and to ensure that children affected by armed conflict have access to adequate health and social services, including psychosocial recovery and social reintegration. In particular, the Committee stresses the importance of educating children, parents and the public at large about the dangers of landmines and unexploded ordnance in order to prevent injury and death. It is crucial that States parties continue to locate landmines and unexploded ordnance, take measures to keep children away from suspected areas, and strengthen their mine clearance activities and, when appropriate, seek the necessary technical and financial support within a framework of international cooperation, including from United Nations agencies. (See also paragraph 23 above on landmines and unexploded ordnance and paragraph 78 below on armed conflicts under special protection measures.)

C. Early identification

56. Very often, disabilities are detected quite late in the child's life, which deprives him or her of effective treatment and rehabilitation. Early identification requires high awareness among health professionals, parents, teachers as well as other professionals working with children. They should be able to identify the earliest signs of disability and make the appropriate referrals for diagnosis and management. Therefore, the Committee recommends that States parties establish systems of early identification and early intervention as part of their health services, together with birth registration and procedures for following the progress of children identified with disabilities at an early age. Services should be both community- and home-based, and easy to access. Furthermore, links should be established between early intervention services, preschools and schools to facilitate the smooth transition of the child.

57. Following identification, the systems in place must be capable of early intervention including treatment and rehabilitation providing all necessary devices that enable children with disabilities to achieve their full functional capacity in terms of mobility, hearing aids, visual aids, and prosthetics among others. It should also be emphasized that these provisions should be offered free of cost, whenever possible, and the process of acquiring such services should be efficient and simple avoiding long waits and bureaucracies.

D. Multidisciplinary care

58. Children with disabilities very often have multiple health issues that need to be addressed in a team approach. Very often, many professionals are involved in the care of the child, such as neurologists, psychologists, psychiatrists, orthopaedic surgeons and physiotherapists among others. Ideally these professionals should collectively identify a plan of management for the child with disability that would ensure the most efficient health care is provided.

E. Adolescent health and development

59. The Committee notes that children with disabilities are, particularly during their adolescence, facing multiple challenges and risks in the area of establishing relationships with peers and reproductive health. Therefore, the Committee recommends that States parties provide adolescents with disabilities with adequate, and where appropriate, disability specific information, guidance and counselling and fully take into account the Committee's general comments No. 3 (2003) on HIV/AIDS and the rights of the child and No. 4 (2003) on adolescent health and development in the context of the Convention.

60. The Committee is deeply concerned about the prevailing practice of forced sterilization of children with disabilities, particularly girls with disabilities. This practice, which still exists, seriously violates the right of the child to her or his physical integrity and results in adverse lifelong physical and mental health effects. Therefore, the Committee urges States parties to prohibit by law the forced sterilization of children on grounds of disability.

F. Research

61. Causes, prevention and management of disabilities do not receive the much needed attention on national and international research agendas. States parties are encouraged to award this issue priority status ensuring funding and monitoring of disability focused research paying particular attention to ethical implications.

VIII. EDUCATION AND LEISURE (arts. 28, 29 and 31)

A. Quality education

62. Children with disabilities have the same right to education as all other children and shall enjoy this right without any discrimination and on the basis of equal opportunity as stipulated in the Convention.[k] For this purpose, effective access of children with disabilities to education has

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[k] In this context the Committee would like to make a reference to the United Nations Millennium Declaration (General Assembly resolution 55/2) and in particular to the Millennium Development Goal No. 2 relating to universal primary education according to which Governments are committed to "ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and that girls and boys will have equal access to all levels of education". The Committee would also like to refer to other international commitments which endorse the idea of inclusive education, inter alia, the Salamanca Statement and Framework for Action on Special Needs Education adopted by the

to be ensured to promote "the development of the child's personality, talents and mental and physical abilities to their fullest potential (see articles 28 and 29 of the Convention and the Committee's general comment No. 1 (2001) on the aims of education). The Convention recognizes the need for modification to school practices and for training of regular teachers to prepare them to teach children with diverse abilities and ensure that they achieve positive educational outcomes.

63. As children with disabilities are very different from each other, parents, teachers and other specialized professionals have to help each individual child to develop his or her ways and skills of communication, language, interaction, orientation and problem-solving which best fit the potential of this child. Each person who furthers the child's skills, abilities and self-development, has to precisely observe the child's progress and carefully listen to the child's verbal and emotional communication in order to support education and development in a well-targeted and most appropriate manner.

B. Self-esteem and self-reliance

64. It is crucial that the education of a child with disability includes the strengthening of positive self-awareness, making sure that the child feels he or she is respected by others as a human being without any limitation of dignity. The child must be able to observe that others respect him or her and recognize his or her human rights and freedoms. Inclusion of the child with disability in the groups of children of the classroom can show the child that he or she has recognized identity and belongs to the community of learners, peers, and citizens. Peer support enhancing self-esteem of children with disabilities should be more widely recognized and promoted. Education also has to provide the child with empowering experience of control, achievement, and success to the maximum extent possible for the child.

C. Education in the school system

65. Early childhood education is of particular relevance for children with disabilities as often their disabilities and special needs are first recognized in these institutions. Early intervention is of utmost importance to help children to develop their full potential. If a child is identified as having a disability or developmental delay at an early stage, the child has much better opportunities to benefit from early childhood education which should be designed to respond to her or his individual needs. Early childhood education provided by the State, the community or civil society institutions can provide important assistance to the well-being and development of all children with disabilities (see the Committee's general comment No. 7 (2005) on implementing child rights in early childhood). Primary education, including primary school and, in many States parties, also secondary school, has to be provided for children with disabilities free of costs. All schools should be without communicational barriers as well as physical barriers

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World Conference on Special Needs Education: Access and Quality, Salamanca, Spain, 7-10 June 1994 (UNESCO and Ministry of Education and Science of Spain) and the Dakar Framework for Action, Education for All: Meeting our Collective Commitments, adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000.

impeding the access of children with reduced mobility. Also higher education, accessible on the basis of capacities, has to be accessible for qualified adolescents with disabilities. In order to fully exercise their right to education, many children need personal assistance, in particular, teachers trained in methodology and techniques, including appropriate languages, and other forms of communication, for teaching children with a diverse range of abilities capable of using child-centred and individualized teaching strategies, and appropriate and accessible teaching materials, equipment and assistive devices, which States parties should provide to the maximum extent of available resources.

D. Inclusive education

66. Inclusive education[1] should be the goal of educating children with disabilities. The manner and form of inclusion must be dictated by the individual educational needs of the child, since the education of some children with disabilities requires a kind of support which may not be readily available in the regular school system. The Committee notes the explicit commitment towards the goal of inclusive education contained in the draft convention on the rights of persons with disabilities and the obligation for States to ensure that persons including children with disabilities are not excluded from the general education system on the basis of disability and that they receive the support required, within the general education system, to facilitate their effective education. It encourages States parties which have not yet begun a programme towards inclusion to introduce the necessary measures to achieve this goal. However, the Committee underlines that the extent of inclusion within the general education system may vary. A continuum of services and programme options must be maintained in circumstances where fully inclusive education is not feasible to achieve in the immediate future.

67. The movement towards inclusive education has received much support in recent years. However, the term inclusive may have different meanings. At its core, inclusive education is a set of values, principles and practices that seeks meaningful, effective, and quality education for all students, that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students. This goal can be achieved by different organizational means which respect the diversity of children. Inclusion may range from full-time placement of all students with disabilities into one regular classroom or placement into the regular class room with varying degree of inclusion, including a certain portion of special education. It is important to understand that inclusion should not be understood nor practiced as simply integrating children with disabilities into the regular system regardless of their challenges

[1] UNESCO's Guidelines for Inclusion: Ensuring Access to Education for All (UNESCO 2005) provides the following definition "Inclusion is seen as a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities, and reducing exclusion within and from education. It involves changes and modifications in content, approaches, structures and strategies, with a common vision which covers all children of the appropriate age range and a conviction that it is the responsibility of the regular system to educate all children … Inclusion is concerned with the identification and removal of barriers …" (pp. 13 and 15).

and needs. Close cooperation among special educators and regular educators is essential. School curricula must be re-evaluated and developed to meet the needs of children with and without disabilities. Modification in training programmes for teachers and other personnel involved in the educational system must be achieved in order to fully implement the philosophy of inclusive education.

E. Career education and vocational training

68. Education for career development and transition is for all persons with disabilities regardless of their age. It is imperative to begin preparation at an early age because career development is seen as a process that begins early and continues throughout life. Developing career awareness and vocational skills as early as possible, beginning in the elementary school, enables children to make better choices later in life in terms of employment. Career education in the elementary school does not mean using young children to perform labour that ultimately opens the door for economic exploitation. It begins with students choosing goals according to their evolving capacities in the early years. It should then be followed by a functional secondary school curriculum that offers adequate skills and access to work experience, under systematic coordination and monitoring between the school and the workplace.

69. Career development and vocational skills should be included in the school curriculum. Career awareness and vocational skills should be incorporated into the years of compulsory education. In countries where compulsory education does not go beyond the elementary school years, vocational training beyond elementary school should be mandatory for children with disabilities. Governments must establish policies and allocate sufficient funds for vocational training.

F. Recreation and cultural activities

70. The Convention stipulates in article 31 the right of the child to recreation and cultural activities appropriate to the age of the child. This article should be interpreted to include mental, psychological as well as the physical ages and capabilities of the child. Play has been recognized as the best source of learning various skills, including social skills. The attainment of full inclusion of children with disabilities in the society is realized when children are given the opportunity, places, and time to play with each other (children with disabilities and no disabilities). Training for recreation, leisure and play should be included for school-aged children with disabilities.

71. Children with disabilities should be provided with equal opportunities to participate in various cultural and arts activities as well as sports. These activities must be viewed as both medium of expression and medium of realizing self-satisfying, quality of life.

G. Sports

72. Competitive and non-competitive sports activities must be designed to include children with disabilities in an inclusive manner, whenever possible. That is to say, a child with a disability who is able to compete with children with no disability should be encouraged and supported to do so. But sports are an area where, because of the physical demands of the sport, children with disabilities will often need to have exclusive games and activities where they can

compete fairly and safely. It must be emphasized though that when such exclusive events take place, the media must play its role responsibly by giving the same attention as it does to sports for children with no disabilities.

IX. SPECIAL PROTECTION MEASURES (arts. 22, 38, 39, 40, 37 (b)-(d), and 32-36)

A. Juvenile justice system

73. In the light of article 2 States parties have the obligation to ensure that children with disabilities who are in conflict with the law (as described in article 40, paragraph 1) will be protected not only by the provisions of the Convention which specifically relate to juvenile justice (arts. 40, 37 and 39), but by all other relevant provisions and guarantees contained in the Convention, for example in the area of health care and education. In addition, States parties should take where necessary specific measures to ensure that children with disabilities de facto are protected by and do benefit from the rights mentioned above.

74. With reference to the rights enshrined in article 23 of the Convention and given the high level of vulnerability of children with disabilities, the Committee recommends - in addition to the general recommendation made in paragraph 73 above - that the following elements of the treatment of children with disabilities (allegedly) in conflict with the law be taken into account:

(a) A child with disability who comes in conflict with the law should be interviewed using appropriate languages and otherwise dealt with by professionals such as police officers, attorneys/advocates/social workers, prosecutors and/or judges, who have received proper training in this regard;

(b) Governments should develop and implement alternative measures with a variety and a flexibility that allow for an adjustment of the measure to the individual capacities and abilities of the child in order to avoid the use of judicial proceedings. Children with disabilities in conflict with the law should be dealt with as much as possible without resorting to formal/legal procedures. Such procedures should only be considered when necessary in the interest of public order. In those cases special efforts have to be made to inform the child about the juvenile justice procedure and his or her rights therein;

(c) Children with disabilities in conflict with the law should not be placed in a regular juvenile detention centre by way of pretrial detention nor by way of a punishment. Deprivation of liberty should only be applied if necessary with a view to providing the child with adequate treatment for addressing his or her problems which have resulted in the commission of a crime and the child should be placed in an institution that has the specially trained staff and other facilities to provide this specific treatment. In making such decisions the competent authority should make sure that the human rights and legal safeguards are fully respected.

B. Economic exploitation

75. Children with disabilities are particularly vulnerable to different forms of economic exploitation, including the worst forms of child labour as well as drug trafficking and begging. In this context, the Committee recommends that States parties which have not yet done so ratify Convention No. 138 (1973) of the International Labour Organization concerning the minimum

age for admission to employment and Convention No. 182 (1999) concerning the prohibition of and immediate action for the elimination of the worst forms of child labour. In the implementation of these conventions States parties should pay special attention to the vulnerability and needs of children with disabilities.

C. Street children

76. Children with disabilities, specifically physical disabilities, often end up on the streets for a variety of reasons, including economic and social factors. Children with disabilities living and/or working on the streets need to be provided with adequate care, including nutrition, clothing, housing, educational opportunities, life-skills training as well as protection from the different dangers, including economic and sexual exploitation. In this regard an individualized approach is necessary which takes full account of the special needs and the capacities of the child. The Committee is particularly concerned that children with disabilities are sometimes exploited for the purpose of begging in the streets or elsewhere; sometimes disabilities are inflicted on children for the purpose of begging. States parties are required to take all necessary actions to prevent this form of exploitation and to explicitly criminalize exploitation in such manner and take effective measures to bring the perpetrators to justice.

D. Sexual exploitation

77. The Committee has often expressed grave concern at the growing number of child victims of child prostitution and child pornography. Children with disabilities are more likely than others to become victims of these serious crimes. Governments are urged to ratify and implement the Optional Protocol on the sale of children, child prostitution and child pornography and, in fulfilling their obligations to the Optional Protocol, States parties should pay particular attention to the protection of children with disabilities recognizing their particular vulnerability.

E. Children in armed conflict

78. As previously noted above, armed conflicts are a major cause of disabilities whether children are actually involved in the conflict or are victims of combat. In this context, Governments are urged to ratify and implement the Optional Protocol on the involvement of children in armed conflict. Special attention should be paid to the recovery and social reintegration of children who suffer disabilities as a result of armed conflicts. Furthermore, the Committee recommends that States parties explicitly exclude children with disabilities from recruitment in armed forces and take the necessary legislative and other measures to fully implement that prohibition.

F. Refugee and internally displaced children, children belonging to minorities and indigenous children

79. Certain disabilities result directly from the conditions that have led some individuals to become refugees or internally displaced persons, such as human-caused or natural disasters. For example, landmines and unexploded ordnance kill and injure refugee, internally displaced and resident children long after armed conflicts have ceased. Refugee and internally displaced children with disabilities are vulnerable to multiple forms of discrimination, particularly refugee and internally displaced girls with disabilities, who are more often than boys subject to abuse, including sexual abuse, neglect and exploitation. The Committee strongly emphasizes

that refugee and internally displaced children with disabilities should be given high priority for special assistance, including preventative assistance, access to adequate health and social services, including psychosocial recovery and social reintegration. The Office of the United Nations High Commissioner for Refugees (UNHCR) has made children a policy priority and adopted several documents to guide its work in that area, including the Guidelines on Refugee Children in 1988, which are incorporated into UNHCR Policy on Refugee Children. The Committee also recommends that States parties take into account the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside of their country of origin.

80. All appropriate and necessary measures undertaken to protect and promote the rights of children with disabilities must include and pay special attention to the particular vulnerability and needs of children belonging to minorities and indigenous children who are more likely to be already marginalized within their communities. Programmes and policies must always be culturally and ethnically sensitive.

Annex IV

GENERAL COMMENT No. 10 (2007)

Children's rights in juvenile justice

I. INTRODUCTION

1. In the reports they submit to the Committee on the Rights of the Child ("the Committee"), States parties often pay quite detailed attention to the rights of children alleged as, accused of, or recognized as having infringed the penal law, also referred to as "children in conflict with the law". In line with the Committee's guidelines for periodic reporting, the implementation of articles 37 and 40 of the Convention on the Rights of the Child ("the Convention") is the main focus of the information provided by the States parties. The Committee notes with appreciation the many efforts to establish an administration of juvenile justice in compliance with the Convention. However, it is also clear that many States parties still have a long way to go in achieving full compliance with the Convention, e.g. in the areas of procedural rights, the development and implementation of measures for dealing with children in conflict with the law without resorting to judicial proceedings, and the use of deprivation of liberty only as a measure of last resort.

2. The Committee is equally concerned about the lack of information on the measures that States parties have taken to prevent children from coming into conflict with the law. This may be the result of a lack of a comprehensive policy for the field of juvenile justice. This may also explain why many States parties are providing only very limited statistical data on the treatment of children in conflict with the law.

3. The experience in reviewing the performance of States parties in the field of juvenile justice is the reason for the present general comment, by which the Committee wants to provide the States parties with more elaborated guidance and recommendations for their efforts to establish an administration of juvenile justice in compliance with the Convention. This juvenile justice which should promote, inter alia, the use of alternative measures such as diversion and restorative justice will provide States parties with possibilities to respond to children in conflict with the law in an effective manner serving not only the best interests of these children, but also the short- and long-term interest of society at large.

II. OBJECTIVES OF THE GENERAL COMMENT

4. At the outset, the Committee wishes to underscore that the Convention requires States parties to develop and implement a comprehensive juvenile justice policy. This comprehensive approach should not be limited to the implementation of the specific provisions contained in articles 37 and 40 of the Convention, but should also take into account the general principles enshrined in articles 2, 3, 6 and 12, and in all other relevant articles of the Convention, such as articles 4 and 39. Therefore, the objectives of the present general comment are:

(a) To encourage States parties to develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency based on and in compliance with the Convention, and to seek in this regard advice and support from the Interagency Panel on Juvenile Justice, with representatives of the Office of the United Nations High Commissioner for

Human Rights (OHCHR), the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime (UNODC) and non-governmental organizations (NGOs), established by Economic and Social Council resolution 1997/30;

(b) To provide States parties with guidance and recommendations for the content of this comprehensive juvenile justice policy, with special attention to prevention of juvenile delinquency, the introduction of alternative measures allowing for responses to juvenile delinquency without resorting to judicial procedures, and for the interpretation and implementation of all other provisions contained in articles 37 and 40 of the Convention;

(c) To promote the integration, in a national and comprehensive juvenile justice policy, of other international standards, in particular, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules"), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the "Havana Rules"), and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the "Riyadh Guidelines").

III. JUVENILE JUSTICE: THE LEADING PRINCIPLES OF A COMPREHENSIVE POLICY

5. Before elaborating on the requirements of the Convention in more detail, the Committee will first mention the leading principles of a comprehensive policy for juvenile justice. In the administration of juvenile justice, States parties have to apply systematically the general principles contained in articles 2, 3, 6 and 12 of the Convention, as well as the fundamental principles of juvenile justice enshrined in articles 37 and 40.

A. Non-discrimination (art. 2)

6. States parties have to take all necessary measures to ensure that all children in conflict with the law are treated equally. Particular attention must be paid to de facto discrimination and disparities, which may be the result of a lack of a consistent policy and involve vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girl children, children with disabilities and children who are repeatedly in conflict with the law (recidivists). In this regard, training of all professionals involved in the administration of juvenile justice is important (see paragraph 97 below), as well as the establishment of rules, regulations or protocols which enhance equal treatment of child offenders and provide redress, remedies and compensation.

7. Many children in conflict with the law are also victims of discrimination, e.g. when they try to get access to education or to the labour market. It is necessary that measures are taken to prevent such discrimination, inter alia, as by providing former child offenders with appropriate support and assistance in their efforts to reintegrate in society, and to conduct public campaigns emphasizing their right to assume a constructive role in society (art. 40, para. 1).

8. It is quite common that criminal codes contain provisions criminalizing behavioural problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems. It is particularly a matter of concern that girls and street children are often victims of this criminalization. These acts, also known as status offences, are not considered to be such if committed by adults. The Committee recommends that

the States parties abolish the provisions on status offences in order to establish an equal treatment under the law for children and adults. In this regard, the Committee also refers to article 56 of the Riyadh Guidelines which reads: "In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person."

9. In addition, behaviour such as vagrancy, roaming the streets or runaways should be dealt with through the implementation of child protective measures, including effective support for parents and/or other caregivers and measures which address the root causes of this behaviour.

B. Best interests of the child (art. 3)

10. In all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration. Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety.

C. The right to life, survival and development (art. 6)

11. This inherent right of every child should guide and inspire States parties in the development of effective national policies and programmes for the prevention of juvenile delinquency, because it goes without saying that delinquency has a very negative impact on the child's development. Furthermore, this basic right should result in a policy of responding to juvenile delinquency in ways that support the child's development. The death penalty and a life sentence without parole are explicitly prohibited under article 37 (a) of the Convention (see paragraphs 75 to 77 below). The use of deprivation of liberty has very negative consequences for the child's harmonious development and seriously hampers his/her reintegration in society. In this regard, article 37 (b) explicitly provides that deprivation of liberty, including arrest, detention and imprisonment, should be used only as a measure of last resort and for the shortest appropriate period of time, so that the child's right to development is fully respected and ensured (see paragraphs 78 to 88 below).[a]

[a] Note that the rights of a child deprived of his/her liberty, as recognized in the Convention, apply with respect to children in conflict with the law, and to children placed in institutions for the purposes of care, protection or treatment, including mental health, educational, drug treatment, child protection or immigration institutions.

D. The right to be heard (art. 12)

12. The right of the child to express his/her views freely in all matters affecting the child should be fully respected and implemented throughout every stage of the process of juvenile justice (see paragraphs 43 to 45 below). The Committee notes that the voices of children involved in the juvenile justice system are increasingly becoming a powerful force for improvements and reform, and for the fulfilment of their rights.

E. Dignity (art. 40, para. 1)

13. The Convention provides a set of fundamental principles for the treatment to be accorded to children in conflict with the law:

(a) *Treatment that is consistent with the child's sense of dignity and worth.* This principle reflects the fundamental human right enshrined in article 1 of the Universal Declaration of Human Rights, which stipulates that all human beings are born free and equal in dignity and rights. This inherent right to dignity and worth, to which the preamble of the Convention makes explicit reference, has to be respected and protected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies and all the way to the implementation of all measures for dealing with the child;

(b) *Treatment that reinforces the child's respect for the human rights and freedoms of others.* This principle is in line with the consideration in the preamble that a child should be brought up in the spirit of the ideals proclaimed in the Charter of the United Nations. It also means that, within the juvenile justice system, the treatment and education of children shall be directed to the development of respect for human rights and freedoms (article 29, paragraph 1 (b) of the Convention and general comment No. 1 (2001) on the aims of education). It is obvious that this principle of juvenile justice requires a full respect for and implementation of the guarantees for a fair trial recognized in article 40, paragraph 2 of the Convention (see paragraphs 40 to 67 below). If the key actors in juvenile justice, such as police officers, prosecutors, judges and probation officers, do not fully respect and protect these guarantees, how can they expect that with such poor examples the child will respect the human rights and fundamental freedom of others?;

(c) *Treatment that takes into account the child's age and promotes the child's reintegration and the child's assuming a constructive role in society.* This principle must be applied, observed and respected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies all the way to the implementation of all measures for dealing with the child. It requires that all professionals involved in the administration of juvenile justice be knowledgeable about child development, the dynamic and continuing growth of children, what is appropriate to their well-being, and the pervasive forms of violence against children;

(d) *Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented.* Reports received by the Committee show that violence occurs in all phases of the juvenile justice process, from the first contact with the police, during pretrial detention and during the stay in treatment and other

facilities for children sentenced to deprivation of liberty. The Committee urges the States parties to take effective measures to prevent such violence and to make sure that the perpetrators are brought to justice and to give effective follow-up to the recommendations made in the report on the United Nations study on violence against children presented to the General Assembly in October 2006.[b]

14. The Committee acknowledges that the preservation of public safety is a legitimate aim of the justice system. However, it is of the opinion that this aim is best served by a full respect for and implementation of the leading and overarching principles of juvenile justice as enshrined in the Convention.

IV. JUVENILE JUSTICE: THE CORE ELEMENTS OF A COMPREHENSIVE POLICY

15. A comprehensive policy for juvenile justice must deal with the following core elements: the prevention of juvenile delinquency; interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings; the minimum age of criminal responsibility and the upper age-limits for juvenile justice; the guarantees for a fair trial; and deprivation of liberty, including pretrial detention and post-trial incarceration.

A. Prevention of juvenile delinquency

16. One of the most important goals of the implementation of the Convention is to promote the full and harmonious development of the child's personality, talents and mental and physical abilities (preamble, and articles 6 and 29). The child should be prepared to live an individual and responsible life in a free society (preamble, and article 29), in which he/she can assume a constructive role with respect for human rights and fundamental freedoms (arts. 29 and 40). In this regard, parents have the responsibility to provide the child, in a manner consistent with his evolving capacities, with appropriate direction and guidance in the exercise of her/his rights as recognized in the Convention. In the light of these and other provisions of the Convention, it is obviously not in the best interests of the child if he/she grows up in circumstances that may cause an increased or serious risk of becoming involved in criminal activities. Various measures should be taken for the full and equal implementation of the rights to an adequate standard of living (art. 27), to the highest attainable standard of health and access to health care (art. 24), to education (arts. 28 and 29), to protection from all forms of physical or mental violence, injury or abuse (art. 19), and from economic or sexual exploitation (arts. 32 and 34), and to other appropriate services for the care or protection of children.

17. As stated above, a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious shortcomings. States parties should fully integrate into their comprehensive national policy for juvenile justice the United Nations Guidelines for the Prevention of Juvenile Delinquency ("the Riyadh Guidelines") adopted by the General Assembly in its resolution 45/112 of 14 December 1990.

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[b] A/61/299.

18. The Committee fully supports the Riyadh Guidelines and agrees that emphasis should be placed on prevention policies that facilitate the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. This means, inter alia that prevention programmes should focus on support for particularly vulnerable families, the involvement of schools in teaching basic values (including information about the rights and responsibilities of children and parents under the law), and extending special care and attention to young persons at risk. In this regard, particular attention should also be given to children who drop out of school or otherwise do not complete their education. The use of peer group support and a strong involvement of parents are recommended. The States parties should also develop community-based services and programmes that respond to the special needs, problems, concerns and interests of children, in particular of children repeatedly in conflict with the law, and that provide appropriate counselling and guidance to their families.

19. Articles 18 and 27 of the Convention confirm the importance of the responsibility of parents for the upbringing of their children, but at the same time the Convention requires States parties to provide the necessary assistance to parents (or other caretakers), in the performance of their parental responsibilities. The measures of assistance should not only focus on the prevention of negative situations, but also and even more on the promotion of the social potential of parents. There is a wealth of information on home- and family-based prevention programmes, such as parent training, programmes to enhance parent-child interaction and home visitation programmes, which can start at a very young age of the child. In addition, early childhood education has shown to be correlated with a lower rate of future violence and crime. At the community level, positive results have been achieved with programmes such as Communities that Care, a risk-focused prevention strategy.

20. States parties should fully promote and support the involvement of children, in accordance with article 12 of the Convention, and of parents, community leaders and other key actors (e.g. representatives of NGOs, probation services and social workers), in the development and implementation of prevention programmes. The quality of this involvement is a key factor in the success of these programmes.

21. The Committee recommends that States parties seek support and advice from the Interagency Panel on Juvenile Justice in their efforts to develop effective prevention programmes.

B. Interventions/diversion (see also section E below)

22. Two kinds of interventions can be used by the State authorities for dealing with children alleged as, accused of, or recognized as having infringed the penal law: measures without resorting to judicial proceedings and measures in the context of judicial proceedings. The Committee reminds States parties that utmost care must be taken to ensure that the child's human rights and legal safeguards are thereby fully respected and protected.

23. Children in conflict with the law, including child recidivists, have the right to be treated in ways that promote their reintegration and the child's assuming a constructive role in society (art. 40, para. 1). The arrest, detention or imprisonment of a child may be used only as a measure of last resort (art. 37 (b)). It is, therefore, necessary - as part of a comprehensive policy for juvenile justice - to develop and implement a wide range of measures to ensure that children are

dealt with in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed. These should include care, guidance and supervision, counselling, probation, foster care, educational and training programmes, and other alternatives to institutional care (art. 40, para. 4).

1. Interventions without resorting to judicial proceedings

24. According to article 40, paragraph 3, of the Convention, the States parties shall seek to promote measures for dealing with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever appropriate and desirable. Given the fact that the majority of child offenders commit only minor offences, a range of measures involving removal from criminal/juvenile justice processing and referral to alternative (social) services (i.e. diversion) should be a well-established practice that can and should be used in most cases.

25. In the opinion of the Committee, the obligation of States parties to promote measures for dealing with children in conflict with the law without resorting to judicial proceedings applies, but is certainly not limited to children who commit minor offences, such as shoplifting or other property offences with limited damage, and first-time child offenders. Statistics in many States parties indicate that a large part, and often the majority, of offences committed by children fall into these categories. It is in line with the principles set out in article 40, paragraph 1, of the Convention to deal with all such cases without resorting to criminal law procedures in court. In addition to avoiding stigmatization, this approach has good results for children and is in the interests of public safety, and has proven to be more cost-effective.

26. States parties should take measures for dealing with children in conflict with the law without resorting to judicial proceedings as an integral part of their juvenile justice system, and ensure that children's human rights and legal safeguards are thereby fully respected and protected (art. 40, para. 3 (b)).

27. It is left to the discretion of States parties to decide on the exact nature and content of the measures for dealing with children in conflict with the law without resorting to judicial proceedings, and to take the necessary legislative and other measures for their implementation. Nonetheless, on the basis of the information provided in the reports from some States parties, it is clear that a variety of community-based programmes have been developed, such as community service, supervision and guidance by for example social workers or probation officers, family conferencing and other forms of restorative justice including restitution to and compensation of victims. Other States parties should benefit from these experiences. As far as full respect for human rights and legal safeguards is concerned, the Committee refers to the relevant parts of article 40 of the Convention and emphasizes the following:

(a) Diversion (i.e. measures for dealing with children, alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings) should be used only when there is compelling evidence that the child committed the alleged offence, that he/she freely and voluntarily admits responsibility, and that no intimidation or pressure has been used to get that admission and, finally, that the admission will not be used against him/her in any subsequent legal proceeding;

(b) The child must freely and voluntarily give consent in writing to the diversion, a consent that should be based on adequate and specific information on the nature, content and duration of the measure, and on the consequences of a failure to cooperate, carry out and complete the measure. With a view to strengthening parental involvement, States parties may also consider requiring the consent of parents, in particular when the child is under the age of 16;

(c) The law has to contain specific provisions indicating in which cases diversion is possible, and the powers of the police, prosecutors and/or other agencies to make decisions in this regard should be regulated and reviewed, in particular to protect the child from discrimination;

(d) The child must be given the opportunity to seek legal or other appropriate assistance on the appropriateness and desirability of the diversion offered by the competent authorities and on the possibility of review of the measure;

(e) The completion of the diversion by the child should result in a definite and final closure of the case. Although confidential records can be kept of diversion for administrative and review purposes, they should not be viewed as "criminal records" and a child who has been previously diverted must not be seen as having a previous conviction. If any registration takes place of this event, access to that information should be given exclusively and for a limited period of time, e.g. for a maximum of one year, to the competent authorities authorized to deal with children in conflict with the law.

2. Interventions in the context of judicial proceedings

28. When judicial proceedings are initiated by the competent authority (usually the prosecutor's office), the principles of a fair and just trial must be applied (see section D below). At the same time, the juvenile justice system should provide for ample opportunities to deal with children in conflict with the law by using social and/or educational measures, and to strictly limit the use of deprivation of liberty, and in particular pretrial detention, as a measure of last resort. In the disposition phase of the proceedings, deprivation of liberty must be used only as a measure of last resort and for the shortest appropriate period of time (art. 37 (b)). This means that States parties should have in place a well-trained probation service to allow for the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day report centres, and the possibility of early release from detention.

29. The Committee reminds States parties that, pursuant to article 40, paragraph 1, of the Convention, reintegration requires that no action may be taken that can hamper the child's full participation in his/her community, such as stigmatization, social isolation, or negative publicity of the child. For a child in conflict with the law to be dealt with in a way that promotes reintegration requires that all actions should support the child becoming a full, constructive member of his/her society.

C. Age and children in conflict with the law

1. The minimum age for criminal responsibility

30. The reports submitted by States parties show the existence of a wide range of minimum ages for criminal responsibility. They range from a very low level of age 7 or 8 to the

commendable high level of age 14 or 16. Quite a few States parties use two minimum ages for criminal responsibility. Children in conflict with the law who at the time of the commission of the crime are at or above the lower minimum age but under the higher minimum age are assumed to be criminally responsible only if they have the required maturity in that regard. The assessment of this maturity is left to the court/judge, often without the requirement of involving a psychological expert, and results in practice in the use of the lower minimum age in cases of serious crimes. The system of two minimum ages is often not only confusing, but leaves much to the discretion of the court/judge and may result in discriminatory practices. In the light of this wide range of minimum ages for criminal responsibility the Committee feels that there is a need to provide the States parties with clear guidance and recommendations regarding the minimum age of criminal responsibility.

31. Article 40, paragraph 3, of the Convention requires States parties to seek to promote, inter alia, the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law, but does not mention a specific minimum age in this regard. The Committee understands this provision as an obligation for States parties to set a minimum age for criminal responsibility. This minimum age means the following:

(a) Children who commit an offence at an age below that minimum cannot be held responsible in a penal law procedure. Even (very) young children do have the capacity to infringe the penal law but if they commit an offence when under the minimum age for criminal responsibility the irrefutable assumption is that they cannot be formally charged and held responsible in a penal law procedure. For these children special protective measures can be taken if necessary in their best interests;

(b) Children at or above the minimum age for criminal responsibility at the time of the commission of an offence (or infringement of the penal law) but younger than 18 (see also paragraphs 35 to 38 below) can be formally charged and subject to penal law procedures. But these procedures, including the final outcome, must be in full compliance with the principles and provisions of the Convention as elaborated in the present general comment.

32. Rule 4 of the Beijing Rules recommends that the beginning of minimum age for criminal responsibility shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity. In line with this rule the Committee has recommended States parties not to set a minimum age for criminal responsibility at a too low level and to increase the existing low minimum age for criminal responsibility to an internationally acceptable level. From these recommendations, it can be concluded that a minimum age for criminal responsibility under the age of 12 is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower minimum age for criminal responsibility to the age of 12 as the absolute minimum age and to continue to increase it to a higher age level.

33. At the same time, the Committee urges States parties not to lower their minimum age for criminal responsibility to the age of 12. A higher minimum age for criminal responsibility, for instance 14 or 16 years of age, contributes to a juvenile justice system which, in accordance with article 40, paragraph 3 (b), of the Convention, deals with children in conflict with the law without resorting to judicial proceedings, providing that the child's human rights and legal safeguards are fully respected. In this regard, States parties should inform the Committee in their reports in specific detail how children below the minimum age for criminal responsibility set in

their laws are treated when they are recognized as having infringed the penal law, or are alleged as or accused of having done so, and what kinds of legal safeguards are in place to ensure that their treatment is as fair and just as that of children at or above the minimum age for criminal responsibility.

34. The Committee wishes to express its concern about the practice of allowing exceptions to a minimum age for criminal responsibility which permit the use of a lower minimum age of criminal responsibility in cases where the child, for example, is accused of committing a serious offence or where the child is considered mature enough to be held criminally responsible. The Committee strongly recommends that States parties set a minimum age for criminal responsibility that does not allow, by way of exception, the use of a lower age.

35. If there is no proof of age and it cannot be established that the child is at or above the minimum age for criminal responsibility, the child shall not be held criminally responsible (see also paragraph 39 below).

2. The upper age-limit for juvenile justice

36. The Committee also wishes to draw the attention of States parties to the upper age-limit for the application of the rules of juvenile justice. These special rules - in terms both of special procedural rules and of rules for diversion and special measures - should apply, starting at the minimum age for criminal responsibility set in the country, for all children who, at the time of their alleged commission of an offence (or act punishable under the criminal law), have not yet reached the age of 18.

37. The Committee wishes to remind States parties that they have recognized the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in accordance with the provisions of article 40 of the Convention. This means that every person under the age of 18 at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice.

38. The Committee, therefore, recommends that those States parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower), or which allow by way of exception that 16- or 17-year-old children are treated as adult criminals, change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18. The Committee notes with appreciation that some States parties allow for the application of the rules and regulations of juvenile justice to persons aged 18 and older, usually till the age of 21, either as a general rule or by way of exception.

39. Finally, the Committee wishes to emphasize the fact that it is crucial for the full implementation of article 7 of the Convention requiring, inter alia, that every child shall be registered immediately after birth to set age-limits one way or another, which is the case for all States parties. A child without a provable date of birth is extremely vulnerable to all kinds of abuse and injustice regarding the family, work, education and labour, particularly within the juvenile justice system. Every child must be provided with a birth certificate free of charge whenever he/she needs it to prove his/her age. If there is no proof of age, the child is entitled to a reliable medical or social investigation that may establish his/her age and, in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt.

D. The guarantees for a fair trial

40. Article 40, paragraph 2, of the Convention contains an important list of rights and guarantees that are all meant to ensure that every child alleged as or accused of having infringed the penal law receives fair treatment and trial. Most of these guarantees can also be found in article 14 of the International Covenant on Civil and Political Rights , which the Human Rights Committee elaborated and commented on in its general comment No. 13 (1984) (Administration of justice) which is currently in the process of being reviewed. However, the implementation of these guarantees for children does have some specific aspects which will be presented in this section. Before doing so, the Committee wishes to emphasize that a key condition for a proper and effective implementation of these rights or guarantees is the quality of the persons involved in the administration of juvenile justice. The training of professionals, such as police officers, prosecutors, legal and other representatives of the child, judges, probation officers, social workers and others is crucial and should take place in a systematic and ongoing manner. These professionals should be well informed about the child's, and particularly about the adolescent's physical, psychological, mental and social development, as well as about the special needs of the most vulnerable children, such as children with disabilities, displaced children, street children, refugee and asylum-seeking children, and children belonging to racial, ethnic, religious, linguistic or other minorities (see paragraphs 6 to 9 above). Since girls in the juvenile justice system may be easily overlooked because they represent only a small group, special attention must be paid to the particular needs of the girl child, e.g. in relation to prior abuse and special health needs. Professionals and staff should act under all circumstances in a manner consistent with the child's dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others, and which promotes the child's reintegration and his/her assuming a constructive role in society (art. 40, para. 1). All the guarantees recognized in article 40, paragraph 2, which will be dealt with hereafter, are minimum standards, meaning that States parties can and should try to establish and observe higher standards, e.g. in the areas of legal assistance and the involvement of the child and her/his parents in the judicial process.

1. No retroactive juvenile justice (art. 40, para. 2 (a))

41. Article 40, paragraph 2 (a), of the Convention affirms that the rule that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time it was committed is also applicable to children (see also article 15 of the International Covenant on Civil and Political Rights). It means that no child can be charged with or sentenced under the penal law for acts or omissions which at the time they were committed were not prohibited under national or international law. In the light of the fact that many States parties have recently strengthened and/or expanded their criminal law provisions to prevent and combat terrorism, the Committee recommends that States parties ensure that these changes do not result in retroactive or unintended punishment of children. The Committee also wishes to remind States parties that the rule that no heavier penalty shall be imposed than the one that was applicable at the time when the criminal offence was committed, as expressed in article 15 of the International Covenant on Civil and Political Rights, is in the light of article 41 of the Convention, applicable to children in the States parties to the International Covenant. No child shall be punished with a heavier penalty than the one applicable at the time of his/her infringement of the penal law. But if a change of law after the act provides for a lighter penalty, the child should benefit from this change.

2. The presumption of innocence (art. 40, para. 2 (b) (i))

42. The presumption of innocence is fundamental to the protection of the human rights of children in conflict with the law. It means that the burden of proof of the charge(s) brought against the child is on the prosecution. The child alleged as or accused of having infringed the penal law has the benefit of doubt and is only guilty as charged if these charges have been proven beyond reasonable doubt. The child has the right to be treated in accordance with this presumption and it is the duty of all public authorities or others involved to refrain from prejudging the outcome of the trial. States parties should provide information about child development to ensure that this presumption of innocence is respected in practice. Due to the lack of understanding of the process, immaturity, fear or other reasons, the child may behave in a suspicious manner, but the authorities must not assume that the child is guilty without proof of guilt beyond any reasonable doubt.

3. The right to be heard (art. 12)

43. Article 12, paragraph 2, of the Convention requires that a child be provided with the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of national law.

44. It is obvious that for a child alleged as, accused of, or recognized as having infringed the penal law, the right to be heard is fundamental for a fair trial. It is equally obvious that the child has the right to be heard directly and not only through a representative or an appropriate body if it is in her/his best interests. This right must be fully observed at all stages of the process, starting with pretrial stage when the child has the right to remain silent, as well as the right to be heard by the police, the prosecutor and the investigating judge. But it also applies to the stages of adjudication and of implementation of the imposed measures. In other words, the child must be given the opportunity to express his/her views freely, and those views should be given due weight in accordance with the age and maturity of the child (art. 12, para. 1), throughout the juvenile justice process. This means that the child, in order to effectively participate in the proceedings, must be informed not only of the charges (see paragraphs 47 and 48 below), but also of the juvenile justice process as such and of the possible measures.

45. The child should be given the opportunity to express his/her views concerning the (alternative) measures that may be imposed, and the specific wishes or preferences he/she may have in this regard should be given due weight. Alleging that the child is criminally responsible implies that he/she should be competent and able to effectively participate in the decisions regarding the most appropriate response to allegations of his/her infringement of the penal law (see paragraph 46 below). It goes without saying that the judges involved are responsible for taking the decisions. But to treat the child as a passive object does not recognize his/her rights nor does it contribute to an effective response to his/her behaviour. This also applies to the implementation of the measure(s) imposed. Research shows that an active engagement of the child in this implementation will, in most cases, contribute to a positive result.

4. The right to effective participation in the proceedings (art 40, para. 2 (b) (iv))

46. A fair trial requires that the child alleged as or accused of having infringed the penal law be able to effectively participate in the trial, and therefore needs to comprehend the charges, and possible consequences and penalties, in order to direct the legal representative, to challenge witnesses, to provide an account of events, and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. Article 14 of the Beijing Rules provides that the proceedings should be conducted in an atmosphere of understanding to allow the child to participate and to express himself/herself freely. Taking into account the child's age and maturity may also require modified courtroom procedures and practices.

5. Prompt and direct information of the charge(s) (art. 40, para. 2 (b) (ii))

47. Every child alleged as or accused of having infringed the penal law has the right to be informed promptly and directly of the charges brought against him/her. "Prompt and direct" means as soon as possible and that is when the prosecutor or the judge initially takes procedural steps against the child. It also means that when the authorities decide to deal with the case without resorting to judicial proceedings, the child must be informed of the charge(s) that may justify this approach. This is part of the requirement of article 40, paragraph 3 (b) of the Convention that legal safeguards should be fully respected. The child should be informed in a language he/she understands. This may require a presentation of the information in a foreign language but also a "translation" of the formal legal jargon often used in criminal/juvenile charges into a language that the child can understand.

48. Providing the child with an official document is not enough and an oral explanation may often be necessary. The authorities should not leave this to the parents or legal guardians or the child's legal or other assistance. It is the responsibility of the authorities (e.g. police, prosecutor, judge) to make sure that the child understands each charge brought against him/her. The Committee is of the opinion that the provision of this information to the parents or legal guardians should not be an alternative to communicating this information to the child. It is most appropriate if both the child and the parents or legal guardians receive the information in such a way that they can understand the charge(s) and the possible consequences.

6. Legal or other appropriate assistance (art. 40, para. 2 (b) (ii))

49. The child must be guaranteed legal or other appropriate assistance in the preparation and presentation of his/her defence. The Convention does require that the child be provided with assistance, which is not necessarily under all circumstances legal but it must be appropriate. It is left to the discretion of States parties to determine how this assistance is provided but it should be free of charge. The Committee recommends that the States parties provide as much as possible for adequate trained legal assistance, such as expert lawyers or paralegal professionals. Other appropriate assistance is possible (e.g. social worker), but that person must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law.

50. As required by article 14, paragraph 3 (b), of the International Covenant on Civil and Political Rights, the child and his/her assistant must have adequate time and facilities for the preparation of his/her defence. Communications between the child and his/her assistance, either in writing or orally, should take place under such conditions that the confidentiality of such communications is fully respected in accordance with the guarantee provided for in article 40, paragraph 2 (b) (vii), of the Convention, and the right of the child to be protected against interference with his/her privacy and correspondence (art. 16). A number of States parties have made reservations regarding this guarantee (article 40, para. 2 (b) (ii)), apparently assuming that it requires exclusively the provision of legal assistance and therefore of a lawyer. That is not the case and such reservations can and should be withdrawn.

7. Decisions without delay and with involvement of parents (art. 40, para. 2 (b) (iii))

51. Internationally there is a consensus that for children in conflict with the law the time between the commission of the offence and the final response to this act should be as short as possible. The longer the period, the more likely it is that the response loses its desired positive, pedagogical impact, and the more the child will be stigmatized. In this regard, the Committee also refers to article 37 (d) of the Convention, where the child deprived of liberty has the right to a prompt decision on his/her action to challenge the legality of the deprivation of his/her liberty. The term "prompt" is even stronger - and justifiably so given the seriousness of deprivation of liberty - than the term "without delay" (article 40, para. 2 (b) (iii) of the Convention), which is stronger than the term "without undue delay" of article 14, paragraph 3 (c), of the International Covenant on Civil and Political Rights.

52. The Committee recommends that the States parties set and implement time limits for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor (or other competent body) to bring charges against the child, and the final adjudication and decision by the court or other competent judicial body. These time limits should be much shorter than those set for adults. But at the same time, decisions without delay should be the result of a process in which the human rights of the child and legal safeguards are fully respected. In this decision-making process without delay, the legal or other appropriate assistance must be present. This presence should not be limited to the trial before the court or other judicial body, but also applies to all other stages of the process, beginning with the interviewing (interrogation) of the child by the police.

53. Parents or legal guardians should also be present at the proceedings because they can provide general psychological and emotional assistance to the child. The presence of parents does not mean that parents can act in defence of the child or be involved in the decision-making process. However, the judge or competent authority may decide, at the request of the child or of his/her legal or other appropriate assistance or because it is not in the best interests of the child (art. 3), to limit, restrict or exclude the presence of the parents from the proceedings.

54. The Committee recommends that States parties explicitly provide by law for the maximum possible involvement of parents or legal guardians in the proceedings against the child. This involvement shall in general contribute to an effective response to the child's infringement of the penal law. To promote parental involvement, parents must be notified of the apprehension of their child as soon as possible.

55. At the same time, the Committee regrets the trend in some countries to introduce the punishment of parents for the offences committed by their children. Civil liability for the damage caused by the child's act may, in some limited cases, be appropriate, in particular for the younger children (e.g. under 16 years of age). But criminalizing parents of children in conflict with the law will most likely not contribute to their becoming active partners in the social reintegration of their child.

8. Freedom from compulsory self-incrimination (art. 40, para. 2 (b) (iii))

56. In line with article 14, paragraph 3 (g), of the International Covenant on Civil and Political Rights, the Convention requires that a child be not compelled to give testimony or to confess or acknowledge guilt. This means in the first place - and self-evidently - that torture, cruel, inhuman or degrading treatment in order to extract an admission or a confession constitutes a grave violation of the rights of the child (art. 37 (a)) and is wholly unacceptable. No such admission or confession can be admissible as evidence (article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

57. There are many other less violent ways to coerce or to lead the child to a confession or a self-incriminatory testimony. The term "compelled" should be interpreted in a broad manner and not be limited to physical force or other clear violations of human rights. The age of the child, the child's development, the length of the interrogation, the child's lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment may lead him/her to a confession that is not true. That may become even more likely if rewards are promised such as: "You can go home as soon as you have given us the true story", or lighter sanctions or release are promised.

58. The child being questioned must have access to a legal or other appropriate representative, and must be able to request the presence of his/her parent(s) during questioning. There must be independent scrutiny of the methods of interrogation to ensure that the evidence is voluntary and not coerced, given the totality of the circumstances, and is reliable. The court or other judicial body, when considering the voluntary nature and reliability of an admission or confession by a child, must take into account the age of the child, the length of custody and interrogation, and the presence of legal or other counsel, parent(s), or independent representatives of the child. Police officers and other investigating authorities should be well trained to avoid interrogation techniques and practices that result in coerced or unreliable confessions or testimonies.

9. Presence and examination of witnesses (art. 40, para 2 (b) (iv))

59. The guarantee in article 40, paragraph 2 (b) (iv), of the Convention underscores that the principle of equality of arms (i.e. under conditions of equality or parity between defence and prosecution) should be observed in the administration of juvenile justice. The term "to examine or to have examined" refers to the fact that there are distinctions in the legal systems, particularly between the accusatorial and inquisitorial trials. In the latter, the defendant is often allowed to examine witnesses although he/she rarely uses this right, leaving examination of the witnesses

to the lawyer or, in the case of children, to another appropriate body. However, it remains important that the lawyer or other representative informs the child of the possibility to examine witnesses and to allow him/her to express his/her views in that regard, views which should be given due weight in accordance with the age and maturity of the child (art. 12).

10. The right to appeal (art. 40, para. 2 (b) (v))

60. The child has the right to appeal against the decision by which he is found guilty of the charge(s) brought against him/her and against the measures imposed as a consequence of this guilty verdict. This appeal should be decided by a higher, competent, independent and impartial authority or judicial body, in other words, a body that meets the same standards and requirements as the one that dealt with the case in the first instance. This guarantee is similar to the one expressed in article 14, paragraph 5, of the International Covenant on Civil and Political Rights. This right of appeal is not limited to the most serious offences.

61. This seems to be the reason why quite a few States parties have made reservations regarding this provision in order to limit this right of appeal by the child to the more serious offences and/or imprisonment sentences. The Committee reminds States parties to the International Covenant that a similar provision is made in article 14, paragraph 5, of the Covenant. In the light of article 41 of the Convention, it means that this article should provide every adjudicated child with the right to appeal. The Committee recommends that the States parties withdraw their reservations to the provision in article 40, paragraph 2 (b) (v).

11. Free assistance of an interpreter (art. 40, para. 2 (vi))

62. If a child cannot understand or speak the language used by the juvenile justice system, he/she has the right to get free assistance of an interpreter. This assistance should not be limited to the court trial but should also be available at all stages of the juvenile justice process. It is also important that the interpreter has been trained to work with children, because the use and understanding of their mother tongue might be different from that of adults. Lack of knowledge and/or experience in that regard may impede the child's full understanding of the questions raised, and interfere with the right to a fair trial and to effective participation. The condition starting with "if" - "if the child cannot understand or speak the language used" - means that a child of a foreign or ethnic origin for example, who - besides his/her mother tongue - understands and speaks the official language, does not have to be provided with the free assistance of an interpreter.

63. The Committee also wishes to draw the attention of States parties to children with speech impairment or other disabilities. In line with the spirit of article 40, paragraph 2 (vi), and in accordance with the special protection measures provided to children with disabilities in article 23, the Committee recommends that States parties ensure that children with speech impairment or other disabilities are provided with adequate and effective assistance by well-trained professionals, e.g. in sign language, in case they are subject to the juvenile justice process (see also in this regard the Committee's general comment No. 9 (2006) on the rights of children with disabilities).

12. Full respect of privacy
(arts. 16 and 40, para. 2 (b) (vii))

64. The right of a child to have his/her privacy fully respected during all stages of the proceedings reflects the right to protection of privacy enshrined in article 16 of the Convention. "All stages of the proceedings" includes from the initial contact with law enforcement (e.g. a request for information and identification) up until the final decision by a competent authority, or release from supervision, custody or deprivation of liberty. In this particular context, it is meant to avoid harm caused by undue publicity or by the process of labelling. No information shall be published that may lead to the identification of a child offender because of its effect of stigmatization, and possible impact on his/her ability to have access to education, work, housing or to be safe. It means that a public authority should be very reluctant with press releases related to offences allegedly committed by children and limit them to very exceptional cases. They must take measures to guarantee that children are not identifiable via these press releases. Journalists who violate the right to privacy of a child in conflict with the law should be sanctioned with disciplinary and when necessary (e.g. in case of recidivism) with penal law sanctions.

65. In order to protect the privacy of the child, most States parties have as a rule - sometimes with the possibility of exceptions - that the court or other hearings of a child accused of an infringement of the penal law should take place behind closed doors. This rule allows for the presence of experts or other professionals with a special permission of the court. Public hearings in juvenile justice should only be possible in well-defined cases and at the written decision of the court. Such a decision should be open for appeal by the child.

66. The Committee recommends that all States parties introduce the rule that court and other hearings of a child in conflict with the law be conducted behind closed doors. Exceptions to this rule should be very limited and clearly stated in the law. The verdict/sentence should be pronounced in public at a court session in such a way that the identity of the child is not revealed. The right to privacy (art. 16) requires all professionals involved in the implementation of the measures taken by the court or another competent authority to keep all information that may result in the identification of the child confidential in all their external contacts. Furthermore, the right to privacy also means that the records of child offenders should be kept strictly confidential and closed to third parties except for those directly involved in the investigation and adjudication of, and the ruling on, the case. With a view to avoiding stigmatization and/or prejudgements, records of child offenders should not be used in adult proceedings in subsequent cases involving the same offender (see the Beijing Rules, rules 21.1 and 21.2), or to enhance such future sentencing.

67. The Committee also recommends that the States parties introduce rules which would allow for an automatic removal from the criminal records of the name of the child who committed an offence upon reaching the age of 18, or for certain limited, serious offences where removal is possible at the request of the child, if necessary under certain conditions (e.g. not having committed an offence within two years after the last conviction).

E. Measures (see also chapter IV, section B, above)

1. Pretrial alternatives

68. The decision to initiate a formal criminal law procedure does not necessarily mean that this procedure must be completed with a formal court sentence for a child. In line with the observations made above in section B, the Committee wishes to emphasize that the competent authorities - in most States the office of the public prosecutor - should continuously explore the possibilities of alternatives to a court conviction. In other words, efforts to achieve an appropriate conclusion of the case by offering measures like the ones mentioned above in section B should continue. The nature and duration of these measures offered by the prosecution may be more demanding, and legal or other appropriate assistance for the child is then necessary. The performance of such a measure should be presented to the child as a way to suspend the formal criminal/juvenile law procedure, which will be terminated if the measure has been carried out in a satisfactory manner.

69. In this process of offering alternatives to a court conviction at the level of the prosecutor, the child's human rights and legal safeguards should be fully respected. In this regard, the Committee refers to the recommendations set out in paragraph 27 above, which equally apply here.

2. Dispositions by the juvenile court/judge

70. After a fair and just trial in full compliance with article 40 of the Convention (see chapter IV, section D, above), a decision is made regarding the measures which should be imposed on the child found guilty of the alleged offence(s). The laws must provide the court/judge, or other competent, independent and impartial authority or judicial body, with a wide variety of possible alternatives to institutional care and deprivation of liberty, which are listed in a non-exhaustive manner in article 40, paragraph 4 of the Convention, to assure that deprivation of liberty be used only as a measure of last resort and for the shortest possible period of time (art. 37 (b)).

71. The Committee wishes to emphasize that the reaction to an offence should always be in proportion not only to the circumstances and the gravity of the offence, but also to the age, lesser culpability, circumstances and needs of the child, as well as to the various and particularly long-term needs of the society. A strictly punitive approach is not in accordance with the leading principles for juvenile justice spelled out in article 40, paragraph 1 of the Convention (see paragraphs 5-14 above). The Committee reiterates that corporal punishment as a sanction is a violation of these principles as well as of article 37 which prohibits all forms of cruel, inhuman and degrading treatment or punishment (see also the Committee's general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment). In cases of severe offences by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need of public safety and sanctions. In the case of children, such considerations must always be outweighed by the need to safeguard the well-being and the best interests of the child and to promote his/her reintegration.

72. The Committee notes that if a penal disposition is linked to the age of a child, and there is conflicting, inconclusive or uncertain evidence of the child's age, he/she shall have the right to the rule of the benefit of the doubt (see also paragraphs 35 and 39 above).

73. As far as alternatives to deprivation of liberty/institutional care are concerned, there is a wide range of experience with the use and implementation of such measures. States parties should benefit from this experience, and develop and implement these alternatives by adjusting them to their own culture and tradition. It goes without saying that measures amounting to forced labour or to torture or inhuman and degrading treatment must be explicitly prohibited, and those responsible for such illegal practices should be brought to justice.

74. After these general remarks, the Committee wishes to draw attention to the measures prohibited under article 37 (a) of the Convention, and to deprivation of liberty.

3. Prohibition of the death penalty

75. Article 37 (a) of the Convention reaffirms the internationally accepted standard (see for example article 6, paragraph 5, of the International Covenant on Civil and Political Rights) that the death penalty cannot be imposed for a crime committed by a person who at that time was under 18 years of age. Although the text is clear, there are States parties that assume that the rule only prohibits the execution of persons below the age of 18. However, under this rule the explicit and decisive criterion is the age at the time of the commission of the offence. It means that a death penalty may not be imposed for a crime committed by a person under 18 regardless of his/her age at the time of the trial or sentencing or of the execution of the sanction.

76. The Committee recommends the few States parties that have not done so yet to abolish the death penalty for all offences committed by persons under the age of 18 and to suspend the execution of all death sentences for those persons till the necessary legislative measures abolishing the death penalty for children have been fully enacted. The imposed death penalty should be changed to a sanction that is in full conformity with the Convention.

4. No life imprisonment without parole

77. No child who was under the age of 18 at the time he or she committed an offence should be sentenced to life without the possibility of release or parole. For all sentences imposed upon children the possibility of release should be realistic and regularly considered. In this regard, the Committee refers to article 25 of the Convention providing the right to periodic review for all children placed for the purpose of care, protection or treatment. The Committee reminds the States parties which do sentence children to life imprisonment with the possibility of release or parole that this sanction must fully comply with and strive for the realization of the aims of juvenile justice enshrined in article 40, paragraph 1, of the Convention. This means inter alia that the child sentenced to this imprisonment should receive education, treatment, and care aiming at his/her release, reintegration and ability to assume a constructive role in society. This also requires a regular review of the child's development and progress in order to decide on his/her possible release. Given the likelihood that a life imprisonment of a child will make it very difficult, if not impossible, to achieve the aims of juvenile justice despite the possibility of release, the Committee strongly recommends the States parties to abolish all forms of life imprisonment for offences committed by persons under the age of 18.

F. Deprivation of liberty, including pretrial detention and post-trial incarceration

78. Article 37 of the Convention contains the leading principles for the use of deprivation of liberty, the procedural rights of every child deprived of liberty, and provisions concerning the treatment of and conditions for children deprived of their liberty.

1. Basic principles

79. The leading principles for the use of deprivation of liberty are: (a) the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; and (b) no child shall be deprived of his/her liberty unlawfully or arbitrarily.

80. The Committee notes with concern that, in many countries, children languish in pretrial detention for months or even years, which constitutes a grave violation of article 37 (b) of the Convention. An effective package of alternatives must be available (see chapter IV, section B, above), for the States parties to realize their obligation under article 37 (b) of the Convention to use deprivation of liberty only as a measure of last resort. The use of these alternatives must be carefully structured to reduce the use of pretrial detention as well, rather than "widening the net" of sanctioned children. In addition, the States parties should take adequate legislative and other measures to reduce the use of pretrial detention. Use of pretrial detention as a punishment violates the presumption of innocence. The law should clearly state the conditions that are required to determine whether to place or keep a child in pretrial detention, in particular to ensure his/her appearance at the court proceedings, and whether he/she is an immediate danger to himself/herself or others. The duration of pretrial detention should be limited by law and be subject to regular review.

81. The Committee recommends that the States parties ensure that a child can be released from pretrial detention as soon as possible, and if necessary under certain conditions. Decisions regarding pretrial detention, including its duration, should be made by a competent, independent and impartial authority or a judicial body, and the child should be provided with legal or other appropriate assistance.

2. Procedural rights (art. 37 (d))

82. Every child deprived of his/her liberty has the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

83. Every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of (the continuation of) this deprivation of liberty within 24 hours. The Committee also recommends that the States parties ensure by strict legal provisions that the legality of a pretrial detention is reviewed regularly, preferably every two weeks. In case a conditional release of the child, e.g. by applying alternative measures, is not

possible, the child should be formally charged with the alleged offences and brought before a court or other competent, independent and impartial authority or judicial body, not later than 30 days after his/her pretrial detention takes effect. The Committee, conscious of the practice of adjourning court hearings, often more than once, urges the States parties to introduce the legal provisions necessary to ensure that the court/juvenile judge or other competent body makes a final decision on the charges not later than six months after they have been presented.

84. The right to challenge the legality of the deprivation of liberty includes not only the right to appeal, but also the right to access the court, or other competent, independent and impartial authority or judicial body, in cases where the deprivation of liberty is an administrative decision (e.g. the police, the prosecutor and other competent authority). The right to a prompt decision means that a decision must be rendered as soon as possible, e.g. within or not later than two weeks after the challenge is made.

3. Treatment and conditions (art. 37 (c))

85. Every child deprived of liberty shall be separated from adults. A child deprived of his/her liberty shall not be placed in an adult prison or other facility for adults. There is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate. The permitted exception to the separation of children from adults stated in article 37 (c) of the Convention, "unless it is considered in the child's best interests not to do so", should be interpreted narrowly; the child's best interests does not mean for the convenience of the States parties. States parties should establish separate facilities for children deprived of their liberty, which include distinct, child-centred staff, personnel, policies and practices.

86. This rule does not mean that a child placed in a facility for children has to be moved to a facility for adults immediately after he/she turns 18. Continuation of his/her stay in the facility for children should be possible if that is in his/her best interest and not contrary to the best interests of the younger children in the facility.

87. Every child deprived of liberty has the right to maintain contact with his/her family through correspondence and visits. In order to facilitate visits, the child should be placed in a facility that is as close as possible to the place of residence of his/her family. Exceptional circumstances that may limit this contact should be clearly described in the law and not be left to the discretion of the competent authorities.

88. The Committee draws the attention of States parties to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly in its resolution 45/113 of 14 December 1990. The Committee urges the States parties to fully implement these rules, while also taking into account as far as relevant the Standard Minimum Rules for the Treatment of Prisoners (see also rule 9 of the Beijing Rules). In this regard, the Committee recommends that the States parties incorporate these rules into their national laws and regulations, and make them available, in the national or regional language, to all professionals, NGOs and volunteers involved in the administration of juvenile justice.

89. The Committee wishes to emphasize that, inter alia, the following principles and rules need to be observed in all cases of deprivation of liberty:

(a) Children should be provided with a physical environment and accommodations which are in keeping with the rehabilitative aims of residential placement, and due regard must be given to their needs for privacy, sensory stimuli, opportunities to associate with their peers, and to participate in sports, physical exercise, in arts, and leisure time activities;

(b) Every child of compulsory school age has the right to education suited to his/her needs and abilities, and designed to prepare him/her for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare him/her for future employment;

(c) Every child has the right to be examined by a physician upon admission to the detention/correctional facility and shall receive adequate medical care throughout his/her stay in the facility, which should be provided, where possible, by health facilities and services of the community;

(d) The staff of the facility should promote and facilitate frequent contacts of the child with the wider community, including communications with his/her family, friends and other persons or representatives of reputable outside organizations, and the opportunity to visit his/her home and family;

(e) Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violation of the rules and standards should be punished appropriately;

(f) Any disciplinary measure must be consistent with upholding the inherent dignity of the juvenile and the fundamental objectives of institutional care; disciplinary measures in violation of article 37 of the Convention must be strictly forbidden, including corporal punishment, placement in a dark cell, closed cell or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned;

(g) Every child should have the right to make requests or complaints, without censorship as to the substance, to the central administration, the judicial authority or other proper independent authority, and to be informed of the response without delay; children need to know about and have easy access to these mechanisms;

(h) Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities, in a confidential setting.

V. THE ORGANIZATION OF JUVENILE JUSTICE

90. In order to ensure the full implementation of the principles and rights elaborated in the previous paragraphs, it is necessary to establish an effective organization for the administration of juvenile justice, and a comprehensive juvenile justice system. As stated in article 40, paragraph 3, of the Convention, States parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children in conflict with the penal law.

91. What the basic provisions of these laws and procedures are required to be, has been presented in the present general comment. More and other provisions are left to the discretion of States parties. This also applies to the form of these laws and procedures. They can be laid down in special chapters of the general criminal and procedural law, or be brought together in a separate act or law on juvenile justice.

92. A comprehensive juvenile justice system further requires the establishment of specialized units within the police, the judiciary, the court system, the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child.

93. The Committee recommends that the States parties establish juvenile courts either as separate units or as part of existing regional/district courts. Where that is not immediately feasible for practical reasons, the States parties should ensure the appointment of specialized judges or magistrates for dealing with cases of juvenile justice.

94. In addition, specialized services such as probation, counselling or supervision should be established together with specialized facilities including for example day treatment centres and, where necessary, facilities for residential care and treatment of child offenders. In this juvenile justice system, an effective coordination of the activities of all these specialized units, services and facilities should be promoted in an ongoing manner.

95. It is clear from many States parties' reports that NGOs can and do play an important role not only in the prevention of juvenile delinquency as such, but also in the administration of juvenile justice. The Committee therefore recommends that States parties seek the active involvement of these organizations in the development and implementation of their comprehensive juvenile justice policy and provide them with the necessary resources for this involvement.

VI. AWARENESS-RAISING AND TRAINING

96. Children who commit offences are often subject to negative publicity in the media, which contributes to a discriminatory and negative stereotyping of these children and often of children in general. This negative presentation or criminalization of child offenders is often based on misrepresentation and/or misunderstanding of the causes of juvenile delinquency, and results regularly in a call for a tougher approach (e.g. zero-tolerance, three strikes and you are out, mandatory sentences, trial in adult courts and other primarily punitive measures). To create a positive environment for a better understanding of the root causes of juvenile delinquency and a rights-based approach to this social problem, the States parties should conduct, promote and/or support educational and other campaigns to raise awareness of the need and the obligation to

deal with children alleged of violating the penal law in accordance with the spirit and the letter of the Convention. In this regard, the States parties should seek the active and positive involvement of members of parliament, NGOs and the media, and support their efforts in the improvement of the understanding of a rights-based approach to children who have been or are in conflict with the penal law. It is crucial for children, in particular those who have experience with the juvenile justice system, to be involved in these awareness-raising efforts.

97. It is essential for the quality of the administration of juvenile justice that all the professionals involved, inter alia, in law enforcement and the judiciary receive appropriate training on the content and meaning of the provisions of the Convention in general, particularly those directly relevant to their daily practice. This training should be organized in a systematic and ongoing manner and should not be limited to information on the relevant national and international legal provisions. It should include information on, inter alia, the social and other causes of juvenile delinquency, psychological and other aspects of the development of children, with special attention to girls and children belonging to minorities or indigenous peoples, the culture and the trends in the world of young people, the dynamics of group activities, and the available measures dealing with children in conflict with the penal law, in particular measures without resorting to judicial proceedings (see chapter IV, section B, above).

VII. DATA COLLECTION, EVALUATION AND RESEARCH

98. The Committee is deeply concerned about the lack of even basic and disaggregated data on, inter alia, the number and nature of offences committed by children, the use and the average duration of pretrial detention, the number of children dealt with by resorting to measures other than judicial proceedings (diversion), the number of convicted children and the nature of the sanctions imposed on them. The Committee urges the States parties to systematically collect disaggregated data relevant to the information on the practice of the administration of juvenile justice, and necessary for the development, implementation and evaluation of policies and programmes aiming at the prevention and effective responses to juvenile delinquency in full accordance with the principles and provisions of the Convention.

99. The Committee recommends that States parties conduct regular evaluations of their practice of juvenile justice, in particular of the effectiveness of the measures taken, including those concerning discrimination, reintegration and recidivism, preferably carried out by independent academic institutions. Research, as for example on the disparities in the administration of juvenile justice which may amount to discrimination, and developments in the field of juvenile delinquency, such as effective diversion programmes or newly emerging juvenile delinquency activities, will indicate critical points of success and concern. It is important that children are involved in this evaluation and research, in particular those who have been in contact with parts of the juvenile justice system. The privacy of these children and the confidentiality of their cooperation should be fully respected and protected. In this regard, the Committee refers the States parties to the existing international guidelines on the involvement of children in research.

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